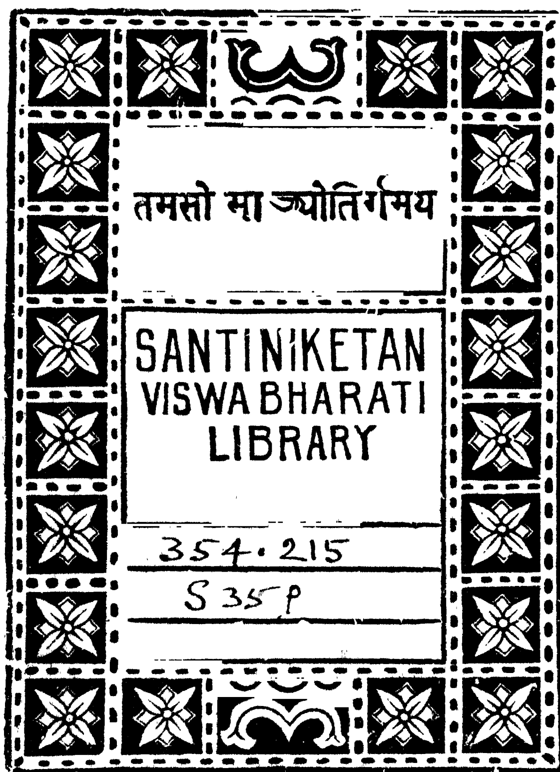


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PROVINCIAL AUTONOMY

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NATIONAL PUBLICATIONS SOCIETY SERIES
NO. 1

PROVINCIAL AUTONOMY

(Under the Government of India Act, 1935)

By

K. T. SHAH

SECOND EDITION (Revised)

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TO

C. S. P.

(*In Gratiam & Memoriam, 28-8-36*)

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PREFACE.

This volume is the first of a Series of National Publications regarding the several Institutions connected with the Public Administration of this country,—both official and non-official—which concern intimately the governance of the country. Beginning with a study of the new Constitution, the subjects for the Monographs in the Series will, it is intended, be so selected and written up, as, in their aggregate and viewed collectively, would help to show the inherent weakness or obstacles, in the present system of administration in the country, which inevitably obstruct the realisation ot *Purna Swaraj* and the accomplishment of the material well-being of the people collectively. The Series as a whole must, likewise, be so co-ordinated as to indicate readily wherein changes, if effected, could enable those very Institutions to promote most effectively the collective well-being of the people of India.

Though each Monograph in the Series would be on a definite subject,—a specific Institution, or Organisation,—it will form an integral part of the entire Series. Each volume will, in its main part, be an objective, analytical, and comparative study, *i.e.* after describing the origin and function of each Institution studied, it would explain how the corresponding Institution functions in other progressive countries of the world, and what part it plays in the social life of those communities. In its main part, therefore, each Monograph will avoid any infusion of partisan sentiment or political bias, consistent with the fulfilment of the principal aim of the entire Series.

This ideal for the writer of each work would be facilitated by the plan of entrusting it to the Editors of

the Series to show, in an Introductory Chapter to each volume, what part the Institution studied in the main portion of the Monograph fills in the everyday life of the Indian people; and to indicate, in a concluding Chapter, the changes or modifications in the constitution and working of the given Institution, which, in the opinion of the Editors, would best serve the needs of a community aiming at socialising all material wealth, and all means of production, distribution, and exchange of such material wealth.

The Series, as a whole, is undertaken to be published by a Registered Society. The Constitution, Aims, and Objects, and the Rules and Regulations of this Society will be given when the Registration Certificate of this Society has been obtained. A list will also be appended there of the several Institutions and Organisations the Society intends to get written upon. The List, it need be hardly added, is neither exhaustive, nor final. It is purely illustrative. The order given there is, likewise, no indication of the real importance attached to each study from the point of view of the social and political reconstruction aimed at by the Society. It is merely a matter of convenience in taking up for study the several Institutions and Organisations, and of keeping them coordinated in a common plan.

The central and ultimate aim of the Society is to strive for a social system in this country which would have all the means of producing, distributing and exchanging material wealth socialised. To accomplish this objective, the Society seeks to educate public opinion by means of these Monographs, so that, if and when the desired goal is reached, it would be reached by peaceful, non-violent means; and would at the same

time, be more substantial and deep-rooted than social innovations born of revolutions usually are. When the Indian people have at last acquired the substance of power in the conduct of their own affairs, they will find it both economical and advantageous to have some readymade programme of national reconstruction before them, so that the appropriate organ of the people's sovereign will can, after due deliberation and the necessary modification, start upon the real task of translating *swaraj* into actual conditions of life. The suggestions in the concluding chapter of each Monograph will, it is hoped, provide a good basis for such a concrete programme of national reconstruction.

In order the more effectively to educate public opinion in this country, each Monograph in the Series is intended to be translated in the principal Indian languages, so as to educate the masses, and make them judge for themselves regarding the suitability of the social organisation and ideals propounded in this Series. That the translations should follow as closely as possible the appearance of the original volumes in English, the Society intends to engage the services of its own staff of translators, unless it can find provincial or linguistic Organisations ready and willing to take off its shoulders this very onerous but indispensable duty.

The Society will endeavour to secure writers who have made a special study of a given Institution to write upon it. But, given the objective of the Society, and given the unfortunate conditions of this country, wherein the leading scholars and thinkers have to be dependent upon an unsympathetic Bureaucracy for their daily bread, it is not unlikely that, were the Society to depend wholly upon such outside writers to

do its main work, it would be unable to keep to anything like a predetermined programme or time table. Hence, in every case where the aid from such unconnected writers fails, the Society will endeavour, nevertheless, to keep to its programme, by means of regularly paid research assistants working in the Editorial Office on a definite plan.

It is the fervent hope of the organisers of the Society to complete the first part of their work,—*i.e.* an analytical, comparative, and critical study of the principal administrative Institutions and other Organisations affecting the public life of this country,—within not more than four years. This time-limit is self-imposed, but not quite as arbitrary as it may seem at first sight. Assuming that the first Legislatures in the country under the new Constitution would be unable to achieve any constructive good for the collective welfare of the people of India, and given a normal life of 5 years for these first Legislatures, a programme of constructive work must be ready and clearcut before their successors come into office, as it were, for the following quinquennium.

The Series, it need hardly be repeated, is so planned that, taking the concluding Chapter of each Monograph, detailed suggestions will be found ready made for reforms or modifications in each Institution or Organisation studied, so as to provide a complete plan of national economy, in all its details. Of course, such a plan would be open to adjustment and improvement in individual particulars. But, rather than set about framing a plan of work for the country when its chosen representatives have at last acquired a substance of power in the governance of their country, the pro-

moters and organisers of this Society believe it would be really helpful if a ready-made programme of national economy were provided, however open it may be to improvement or adjustment in individual particulars.

Though one of the Editors of this Series is President of the Indian National Congress, and another a member of its Working Committee, the comments and criticisms contained in this Volume, or the views and opinions expressed even in the Introductory and concluding Chapters, in subsequent volumes, will reflect, it is but just to add, only the personal opinions of the writers; and in no way bind the Congress, or reflect its opinion on given topics.

The present Monograph is the first in the Series of National Publications. It contains an analytical study of the system of Provincial Autonomy claimed to be introduced by the new Constitution Act of 1935. It is not a purely academic, nor a juristic study of the new Constitution, nor a compendious commentary on the text of the Act for use by the constitutional lawyer. It is rather an attempt at explaining the mechanism of the new Constitution and the hidden springs of its working, which is of the utmost importance at the present juncture in this country's constitutional evolution. A systematic study of the Constitution ought, it is true, to have commenced with Section 1 of the new Act, whereas the present volume brings, so to speak, in the middle of the Act with Part III. The explanation of this anomaly is to be found in the topical importance of the question of Provincial Autonomy, in view of the General Elections being held for the first Provincial Legislatures under the new Constitution.

The same consideration may also explain the absence of those distinguishing features of the Series in this Monograph,—*viz.*, the Introductory and Concluding Chapters in the Monograph,—which would constitute the real contribution by the Society towards a proper understanding of the new system of governance in India; and an indication of the needs of this country in regard to a Constitution in general. A Constitution, it need hardly be observed, is only a tool, a means, a framework, to enable a community to attain its objective of social organisation and human effort with the greatest ease. To what extent this Constitution would help the Indian people to realise their collective consciousness and to attain their social ambitions; and what changes would be necessary in the Constitution Act of 1935 to enable the Indian people to effect the indispensable social reconstruction, would be the function of such Editorial contribution. As, however, two of the three Editors are occupied with the General Elections, they could not find the necessary time to think out and prepare the Chapters in the Series which would ordinarily be jointly contributed by them. It has, therefore, been decided to treat the present Monograph as only the first part of a double-volumed study of the Constitution. The second volume would not only contain a study of the Federal Structure and other parts of the governmental machinery imposed by Act of Parliament upon India, and examine their future working; it would also contribute in a consolidated form the two important Chapters omitted from this Volume, so as to put forward the N. P. Society's idea of constitutional reconstruction needed to enable India to enjoy the fullest national independence, the political frame work which would help her to shape

her own new social system as may seem best to the people of the country, or to their trusted leaders and chosen representatives.

In itself, also, the present Volume is open to certain criticisms which the writer can only apologise for on the ground of the conditions under which the work had to be got ready and seen through the press. The lack of uniformity, for instance, in the place given to the actual terms of the Constitutional Law,—sometimes in the body of the work, sometimes in foot-notes,—is an outcome of the plan adopted for treatment in this Volume, which, as already observed, is not a study of the Constitution Act for the benefit of the University Student, or the juridical exponent, or the legal practitioner. It is a study intended mainly to serve the need of the moment, as the writer conceives it. As such, it is likely to suffer from some defects of form and treatment, which have been just instanced. Admitting and apologising for these, the writer is not without hope that, notwithstanding the obvious limitations or shortcomings of the work, even the classes of its readers not primarily intended to be catered for will find something of interest, something by way of new information, or at least a new presentment of the facts, which may help them also to understand the Constitution better, from their specialist point of view.

Bombay, January 25, 1937. K. T. SHAH.

PREFACE TO THE SECOND EDITION

The hearty response which the public gave to the first edition of this work has necessitated the bringing out of a new edition within the short space of less than six months. Opportunity has been taken of this new edition to make certain changes, in the form as well as the matter of the book, the need and utility of which the reader will be able to judge for himself as he goes through the work. The most important changes, however, consist in: (1) the omission of the text of certain sections of the Act, particularly those relating to the Civil Services, which, having been duly explained and commented upon in the body of the work, were needless textually to include, (2) the portion of the appendix in Chapter VI, which repeated the voters' qualifications in certain other Provinces; (3) minor changes, too numerous to be detailed.

Though the work has met with a very hearty response from the public, and evoked sympathetic appreciation from the press, the writer was not unaware of the many shortcomings and defects inevitable in the first edition. He has endeavoured to correct as many of them as could be in this new edition, and also to utilise the suggestions made by many a friendly critic in the public press of the country. The most important point, however, in the critique of the work in one paper, namely, omission to deal with the Constitutional impasse,—though not quite pertinent to the first edition in view of the date at which it appeared,—has been answered in this edition by a specific note inserted at the end of this Preface. Other suggestions made by critics will be found to have been met in the body of the work, which has also been brought up-to-date,

wherever necessary. No changes in the main work are necessitated by the recent decision of the Congress Working Committee on the question of the Congress Party shouldering Ministerial responsibility.

In the new form, the work may appear to be somewhat abridged, but the shrinkage in size for the greater portion has already been explained. The companion volume on Federal Structure, being now in the press, has been referred to more than once in the foot-notes, which, in the first edition, it was impossible to insert. The two volumes together make a more or less complete study of the new Constitution; and, as such, it would be proper to consider them together. An index is added to make the work more handy for reference.

The same general character of the design and purpose of this work, in both parts, has been retained as was claimed for the first edition of Provincial Autonomy. The work is an attempt at a popular explanation of the new Constitution, designed, primarily, for the use of the average citizen or politician, which can naturally lay claim to no excess of juridical erudition or constitutional profundity, that might perhaps be expected from the title of this work.

The delay in the publication of the volume on "Federal Structure" has been occasioned by circumstances, over which the writer had no control; but he trusts to an indulgent public to overlook that misfortune. It will now be of a short duration, and the work will appear in good time before the Federation of India is an accomplished fact.

Bombay,
15th July, 1937.

K. T. S.

NOTE ON THE CONSTITUTIONAL IMPASSE

The constitutional impasse created in April 1937, when Part III of the Act of 1935 was put into operation, and the system of Provincial Autonomy was said to be introduced, arose out of a lack of clarity as to the legal meaning and constitutional implications of the triple set of executive powers and functions vested in the Provincial Governors:

(i) the powers and functions to be exercised in the Governor's sole discretion.

(ii) those in which he is to exercise his individual judgment; and

(iii) those in which he must act upon the advice of his Ministers.

In the first, he need not even refer to his Ministers, if he so chooses, and can take decisions entirely on his own responsibility. It must be added, however, that there is no obligation imposed by the letter of the law upon the Governor, that, in matters in which he is entitled to take action on his own sole responsibility and discretion, he must in no case consult his Ministers at all. It is entirely in his *discretion* whether he does or not.

In the second category, there are certain imperative obligations imposed upon the Governor by the Act, in which he has no option but *to exercise his individual judgment.* The manner in which his individual judgment is to be exercised is exemplified or made more definite by the several articles of his Instrument of Instructions. That does not mean, however, that he must not consult his Ministers at all in such

cases; nor that he must go counter to their advice in every instance. The Act makes it incumbent on him to consult his Ministers, in the first place [*Vide Section* 50 (10)]. But, should the advice of the Ministers not consort with the Governor's own conception of his special responsibility under the Act in respect of the given case, he is empowered to act on his own judgment. He may, that is to say, disregard the advice of his Ministers in the given case; and act as he himself considers proper in the matter. The list of matters in which the Governor is entitled to exercise his own judgment, given in the text, is, no doubt, formidable and imposing; and, to the extent that there is reason to apprehend a general lack of sympathy or mutual understanding between the Governor and his Ministers of a particular political complexion in such matters, causes of conflict and constitutional deadlocks may not be inconceivable, or even unusual.

A keen appreciation of this possibility,—apart from the many other shortcomings of the new Constitution,—led many Congress leaders to concentrate their fundamental opposition to it on this aspect of its working impossibility. It was the spearhead, the concrete expression, of the general objection on account of its unsuitability and inadequacy to Indian requirements.

The National Convention,—consisting of Provincial Legislators of the Congress Party, and Members of the All-India Congress Committee,—authorised, in March 1937, after much discussion, Congessmen to accept Ministerial responsibility in the Provinces where they were in a majority in the Legislative

Assembly, provided the leader of the Ministry-to-be was in each case satisfied,—and was in a position publicly to declare it,—that, in all their constitutional activities, the Governor would ordinarily not exercise his extraordinary powers; and that he would refrain from interference in the day-to-day affairs of the Provincial Administration.

This demand was not intended to make a dead letter of the Governor's special responsibilities, or his discretionary powers. It was intended to avoid needless interference of the Governor in every detail of the Provincial Administration, even though, by the letter of the law, he may be entitled to do so. The assurance, given in advance by the terms of this resolution, of the Ministers pursuing Constitutional activities,—in regard to which only the counter-assurance was sought from the Governors,—was in itself a guarantee, or at least a clear indication, that, no matter what the professions and declarations of the Congress candidates and their supporters at the time of the Elections to wreck or render unworkable the Constitution, they were, if entered upon Office, going to follow in office only those activities which could be described as Constitutional; and that, consequently, if this Constitution came to be wrecked or rendered unworkable, it could only be so owing to its own inherent unworkability; or because modern India has outgrown the stage of political advance which this Constitution is designed to meet.

The Governors, however, seem to have interpreted this demand for assurance, not to use the extraordinary powers so long as the Ministers were pursuing constitutional activities, to mean a practical abdication of

the powers and authority vested in them by law. But, inasmuch as in regard to the most considerable case of extraordinary powers, *viz.*, that in regard to the exercise of Discretion, the Constitution nowhere enjoins it upon the Governor to use his discretion in a particular manner only; inasmuch as the Governor is nowhere expressly *prohibited* from doing anything in accordance with his Ministers' advice, even in those branches of the administration where he is given sole discretion, the grant of this assurance would have in no way involved any *divestment* of powers vested in the executive chief by the Constitution. If the Instructions to the Governor* are carefully scrutinised, it seems to be the intention of this Act for the Governors to foster and promote a sense of collective responsibility among the Ministers,—an ideal, which would have in no way been impeded if the Governors had granted such an assurance. The express obligations laid upon them by law, *e.g.*, in respect of the so-called "Special Responsibilities" of the executive chiefs, would also not be affected by such an assurance, if granted. For, the Ministers going counter in any given case to such responsibilities of the Governor would not be acting constitutionally; and, therefore, the assurance given to them would not in that case apply.

With the construction of the Convention Resolution mentioned above in their mind, however, the Governors, in the six Provinces where the Congress had secured a majority, sent for the leaders of the Congress Party in their respective Legislative Assemblies, invited them to form Ministries, and offered them all the sympathy and co-operation they could give; but

*See Appendix to Chapter III, Provincial Autonomy.

declined to give the one assurance those Leaders demanded. Hence arose the deadlock.

The majority Party in those Provinces so far (6th July, 1937) has refused to shoulder responsibility which they fear would prove an unrelieved burden, an unmitigated hindrance in their endeavours to carry out their programmes of national development,—so long as the alien, and, very possibly, unsympathetic, Governor stood in the background, with immense powers to check, to thwart, and even to frustrate the Ministers of the people's will. The Governors, on their side, appeared to regard this insistence on a preliminary assurance, not to exercise his lawful though extraordinary powers so long as the Ministers followed Constitutional activities only, as a thinly veiled attempt to deprive him of his constitutional powers to discharge the responsibilities specifically imposed by Parliament. The interim ministries appointed in these Provinces are, admittedly, no solution of the impasse; and the suspension of the Constitution, under section 93, in any of these Provinces, though a haunting possibility, does not seem specifically courted by either side.

The statements and counter-statements, which have followed,—on the Congress side, by Mahatma Gandhi, C. Rajagopalachariar, and even embodied in a formal resolution of the Working Committee; and, on the Government side, by the Secretary of State, the Under-Secretary of State, and, lastly, a long statement by the Governor-General on June 22nd 1937, —have sought to clear the issue and attempt a solution, —all, apparently, to no purpose. The issue has been at times even more befogged, as if it was a question of

the Governor's day-to-day interference in administration; or of his demanding the Ministries' resignation in preference to dismissing them on his own authority; or a question of protecting adequately the minorities. At bottom, the issue remains what it was at the end of March last, viz., the likelihood of the powers vested in the Governor operating as such a restraint or hindrance upon the Ministers as to make the latter unable to do anything constructive for the benefit of the people or the development of the country, in accordance with their pledges at Election times.

The usual constitutional expedient, in such an impasse, of getting the difficulty removed by means of a judicial interpretation of the Constitution, seems to have been strangely ignored in the course of this controversy. In one of his statements, Mahatma Gandhi had, indeed, suggested that the matter could be investigated by an Arbitration Tribunal, as to whether or not it was possible, under the Act, to afford such an assurance as the Congress Party had demanded of the Governors. But the suggestion was met with a frigid silence in official quarters, thereby providing a strange commentary on the intentions of those who helped to frame the Constitution, and who, like Lord Linlithgow, are now called upon to work it. The silence is the more inexplicable, as the Act itself seems to have foreseen some such difficulty in the transitional period as has now arisen; and made a specific provision to tide over it. Says section 310

"(1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act:

And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot, at the date of the passing of this Act, be fully foreseen, now, therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council:

(a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified;

(b) make, with respect to a limited period so specified such temporary provision as he thinks fit for insuring that, while the transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenues to enable the business of those governments to be carried on; and

(c) make such other temporary provision for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order-in-Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act."

Though this is, in terms, only a temporary solution of difficulties in a transition period, which could not have been foreseen when the Act was passed; and though the solution is to be in the shape of an Order-in-Council,—which is usually the act of the executive British Government,—a very little stretching of the terms might make the "Council" here spoken of to mean the Judicial Committee of the Privy Council, and the solution advised by that body be embodied

in the Constitution, permanently, if necessary, by its specific amendment. The actual Tribunal set up to decide this matter could even have been so composed as to leave no ground for mis-givings in the Congress leaders' minds, or in the British Government's. There are sufficient jurists,—Indians as well as Britishers,—on the Privy Council today to allow of a reasonable and mutually acceptable choice by each side; while a chairman for the Tribunal could have been selected by agreement of the persons chosen in the first instance to make up the Tribunal. Given goodwill, and a sincere desire to allow the man-datories of the Indian people to carry on the Government of the Province within the frame-work of the constitution provided, there could have been no real objection to make this much concession in interpreting and applying the sec-tion. And, had the Congress party been able to cite precedents before such a Tribunal, or otherwise convince it of the reasonableness of its demand, an authoritative, honourable, and mutually satisfactory solution could have been easily obtained. For the moment, however, that course, or any other com-promise, seems to be equally unwanted by the powers that be; and the impasse persists as hard as ever.

* * * *

Since the above was written, the Working Com-mittee, executive authority of the Indian National Con-gress has found a way out of the impasse by passing the following Resolution authorising acceptance of Ministerial Responsibility, in the 6 Provinces in which the Congress Party is in a majority, *without* insisting upon any preliminary assurance from the Governors.

"The All-India Congress Committee, at its meeting held in Delhi on March 18, passed a resolution affirming the basic Congress policy in regard to the new Constitution and laying down the programme to be followed inside and outside the Legislatures by Congress members of such Legislatures. It further directed that, in pursuance of that policy, permission should be given for Congressmen to accept office in provinces where the Congress Party was satisfied and could state publicly that the Governor would not use his special powers of interference, or set aside the advice of Ministers in regard to their constitutional activities.

Viceroy's Gesture

"In accordance with these directions, the leaders of Congress Parties, who were invited by Governors to form Ministries, asked for the necessary assurances. These not having been given, the leaders expressed their inability to undertake the formation of Ministries.

"But since the meeting of the Working Committee on April 28 last Lord Zetland, Lord Stanley and the Viceroy have made declarations on this issue on behalf of the British Government. The Working Committee has carefully considered these declarations, and is of opinion that, though they exhibit a desire to make an approach to the Congress demand, they fall short of the assurances demanded in terms of the A.I.C.C. resolution as interpreted by the Working Committee's resolution of April 28.

"Again, the Working Committee is unable to subscribe to the doctrine of partnership propounded in some of the aforesaid declarations. The proper description of the existing relationship between the British

Government and the people of India is that of exploiter and exploited, and hence they have a different outlook upon almost everything of vital importance.

Combating the New Act

"The Committee feels, however, that the situation created, as a result of the circumstances and events that have since occurred, warrants the belief that it will not be easy for the Governors to use their special powers. The Committee has, moreover, considered the views of the Congress members of the Legislatures and of Congressmen generally. It has, therefore, come to the conclusion and resolved that Congressmen be permitted to accept office where they may be invited thereto, but it desires to make it clear that office is to be accepted and utilised for the purpose of working in accordance with the lines laid down in the Congress election manifesto, and to further in every possible way the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other.

"The Working Committee is confident that it has the support and backing of the A.I.C.C. in this decision, and that this resolution is in furtherance of the general policy laid down by the Congress and the A.I.C.C. The Committee would have welcomed the opportunity of taking the direction of the A.I.C.C. in this matter, but it is of opinion that delay in taking a decision at this stage would be injurious to the country's interests and would create confusion in the public mind at a time when prompt and decisive action is necessary."

K. T. S.

CHAPTER I.

PROVINCIAL ADMINISTRATION IN INDIA.

Evolution of Indian Provinces.

Governors' Provinces: Under Section 46 of the Government of India Act, 1935, the following have been described as *Governors' Provinces, viz.* Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind. Burma is specifically excluded from India, as also Aden. (Sec. 288).

Chief Commissioners' Provinces: Under Section 94 of the same Act, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, as also the area known as Panth Piploda, are classed as Chief Commissioners' Provinces.

Between these two classes of Provinces, there is the essential difference,* *viz.*, that, whereas the Governors' Provinces become self-governing units under the conditions and limitations laid down in the Act of 1935, the Chief Commissioners' Provinces are to be administered, even under the new Constitution, by the Governor-General, acting, within defined limits, through a Chief Commissioner in each case. This officer is appointed by the Governor-General, acting "in his discretion" *i.e.* without any reference to or consultation

*The old distinction between Regulation and Non-Regulation Provinces, between Presidencies and other Provinces, between Governors', Lieutenant-Governors', and Chief Commissioners' Provinces, has now no longer any significance in the scheme of Indian Governance.

with his responsible Ministers or Advisers.* Except Coorg, which may be given a Legislative Council of its own,† none of the Chief Commissioners' Provinces will have a responsible Local Government of their own. All these Provinces,—except the Andaman and Nicobar Islands,—are given representation in the Federal Assembly and the Council of State.‡

New Provinces created hereafter: Subject to the provisions of Section 290 of the Government of India Act, 1935, His Majesty is empowered, by Order in Council, to create new Provinces, to increase or diminish the area of any such unit, or to alter its boundaries.§

Differences between Provinces: Even apart from this constitutional difference between the Governors' Provinces and the Chief Commissioners', there are striking differences between the several units within each of these two categories. In area, in population, in wealth or resources, these Provinces differ *inter se* most markedly, as is but too clearly evidenced by the Table attached. Historically they are not all of the same antiquity; politically, not of the same importance; geographically, not of the same configurations; economically, not of the same level of development. Whatever their individual past in the crowded

*Sec. 9(1).

†Sec. 97.

‡Sec. 18, schedule 1, 25 and 26 Ges. V ch. 42. and Federal Structure ch. VIII.

§It is open to question if there is any power to change the status of a Chief Commissioner's Province into that of a Governor's Province, or **vice versa** though, of course, under the power to change the boundaries, and create new Provinces of any status, any area administered as a Chief Commissionership may be raised to be a Governor's Province; while the entire Constitution may be suspended (Sec. 93 Ibid.) in a Governor's Province; and so the dividing line may be abolished.

annals of Indian history,—and it is questionable if in their present form every one of these had a historical individuality at all,—in the British period each of these units has been the creation of the Central Government, almost exclusively for administrative convenience. Without going into the juridical complications and constitutional niceties, regarding the right and title of the British Parliament, or of the British Sovereign, to create, new Provinces in India,* or dismember old ones;† to take away what has for the greater part of a century been part of India,‡ or add what have all through recent history remained apart from the British Indian polity,§ the fact must be emphasised that the existing Indian Provinces are the creatures of the Central British authority in India, and the driving force leading to the institution of each such unit has been rather political expediency or administrative necessity, than any recognition of historical individuality, geographical sympathy, or even of the principle of self-determinism by distinct peoples or communities.

*e.g., Eastern Bengal and Assam, in 1905.

†Orissa separated from Bihar, or Sind from Bombay, in 1936-37.

‡e.g., Burma, in 1936-37.

§Some districts in the N.W.F.

Table I. Provinces of India, their Area, Population, Revenues, Wealth

Name of Province	Area in Sq. Miles	Population	Revenues in Rs thousands	Expenditure	Wealth in Crores.
Governors' Provinces					
1. Madras	142,277	46,740,107	16,40,25	15,63,04	151.91
2. Bombay	77,221	17,992,053	15,25,17	14,98,95	176.54
3. Bengal	77,521	50,114,002	9,38,04	10,67,83	189.63
4. United Provinces	106,248	48,408,763	11,45,21	11,29,93	215.64
5. Punjab	99,200	23,580,852	10,23,92	10,06,41	185.87
6. Bihar	42,335	25,727,500	5,05,83	5,00,48	127,00
7. Orissa	13,706	5,306,142	—	—	—
8. Central Provinces & Berar	99,920	15,507,723	4,49,79	4,49,44	80.85
9. Assam	55,014	8,622,251	2,19,67	2,36,47	44.91
10. N. W. F.			—	—	10.68
Province	13,580	2,425,076	1,60,11	1,58,16	99.37
11. Sind	46,378	3,887,070	—	—	
Chief Commissioners' Provinces					
1. Baluchistan	54,228	463,508	—	—	
2. Ajmer-Merwara	2,711	560,292			
3. Coorg	1,593	163,327	11,78	13,59	
4. Delhi	573	636,246	—	—	
5. Andamans & Nicobars	3,143	29,463			

Note: The Area and Population figures in the above Table have been compiled from the "Statistical Abstract for British India," Twelfth Issue, the population figures being in accordance with the Census of 1931. The Revenue and Expenditure figures are taken from the same source and relate to 1932-33; while the figures for the wealth of each Province are taken from the "Wealth and Taxable Capacity of India," by K. T. Shah and K. J. Khambata. They relate to estimates prepared on the basis of quantity figures of the several crops and industrial products, converted into money terms on average prices between 1900 and 1921. The revenue and Expenditure figures for Bombay include Sind, and for Bihar include those for Orissa; while the wealth figures for the latter province are also inclusive of Orissa. There has been an immense depression in the wealth of the Agricultural Provinces since 1929, owing to a heavy slump in prices; and so the figures in the last Column must be very much lower if the estimates were more uptodate.

Bengal and Bombay (minus Sind) are about the same in size; but Bengal has three times the population of the Western Presidency, though only about 7% more of the material wealth, and only about 60% of the revenue resources of Bombay. Though Bombay's aggregate revenues may diminish by the separation of Sind, the relative position in point of revenue would remain undisturbed as compared to Madras. In area, Bengal has about 55% of that of Madras, though in population it is 10% *more* crowded than the Southern Presidency. Punjab has half the population of the United Provinces, though only about 7% less area, 15% less total wealth, and 10% less revenue resources. The rate of development seems far more rapid in the Northern satrapy than in the United Provinces. The 5 major Provinces command more than 4 times the financial strength than their 6 weaker neighbours put together. A Province like Madras exceeds by itself the total revenue strength of all the lesser Governors' Provinces and Chief Commissionerships put together. Industrialisation is changing rapidly the face of some of the agricultural provinces; while the more recent development in Irrigation on the larger rivers of Sind and the Punjab, combined with the new means of transport, fairly promise to modify materially the relative economic position of these units, if they can fully avail themselves of opportunities said to be open to them under the Act of 1935.

ORIGIN OF PROVINCES.

Madras: To appreciate more fully the meaning of these inherent variations in the size and strength of the several Governors' Provinces, a brief historical review of the origin of these Provinces would not be out of

place. Though the earliest British settlements were on the Western Coast, the first Province to attain anything like its present size and importance was Bengal. Thanks to the acquisition of the Diwani,—or the right to collect and receive the revenues of the three Mughal Subahs of Bengal, Bihar and Orissa, in the name of the Mughal Emperor,—that area received an organisation and importance long before the other centres of British power obtained such recognition. At the time of the Regulating Act, that Province was, accordingly, given a primacy, which endured for 138 years, mainly because of the association of the Government of Bengal with the Government of India. That association, while useful materially, was fatal from the stand-point of the recognition of the provincial individuality.

Madras and Bombay were, accordingly, the first provinces to reach the rank of distinct Presidencies, ever since the beginnings of organised government of the territories under their respective charge. As between these two, again, Madras attained practically its present size since the defeat and destruction of Tippu Sultan of Mysore, 1799. Minor changes of boundaries have, no doubt, occurred since. But the Presidency of Madras has, in the main, remained as it was formed in 1799. With a coast line of over 1700 miles; with numerous rivers watering the main districts, and enriching them through innumerable irrigation works, by regular and plentiful crops of rice, cotton, sugarcane, ground-nut; with vast luxuriant groves of the cocoa-nut and other palms, and rich plantations of tea and coffee and rubber on its highlands, Madras is mainly an agricultural Province, having numerous outlets for its produce to the east as well as the west. By

religion, too, it is a fairly homogeneous unit, since only about 7% of the population are Muhammadans, and about 3·80% Christians.

Linguistically, and also socially, however, the Province has its own problems. 18·56 million speak Tamil, and 17·74 million speak Telugu, accounting for nearly 80% of the population. The Telugu districts lie mainly north of the Cauvery, stretching along the eastern seaboard to the confines of the Province. The Tamil-speaking districts, on the other hand, lie in the south and centre. Malayali districts, with 3·72 million people, are in the south-west, and the Kanarese Districts in the North. The main linguistic divisions are thus clearly marked off from each other. There is a definite demand of the Telugu-speaking areas to be made into a separate Province of Andhra. It has been voiced on more than one occasion in formal resolutions passed by a good majority in the Madras Legislative Council. The Malayali and Kanarese districts may also have such separatist tendencies; but they do not form such large numerical blocks, nor are perhaps so compactly situated, as to justify a demand for separate provincial organisation. If the principle of Linguistic reorganisation of the Provinces in India is to be adopted, these regions will have to be regrouped with others of their kind now in Indian State territory. This, however, would involve a degree of uniformity in the governance of Indian States with that in British India, which is at present utterly unacceptable to the Indian States.

Besides the linguistic divisions, there is the social problem. Nowhere, perhaps, in India is the curse of Untouchability so heavy as in Madras. 7¼ million of

its total population of $46\frac{3}{4}$ millions are regarded practically as Untouchables, or Depressed Classes. These, it may be added, are found in the largest proportion in the Tamil districts. It is, however, impossible to make these classes into a separate province by themselves, not only because they are too scattered to afford the necessary unity, but also because they are too poor and backward to benefit by a separate provincial existence. To organise them separately would, moreover, mean a recognition of the accepted and abiding character of these social distinctions which no thoughtful person can welcome. They have no independent culture of their own to develop, nor distinct economic possibilities to fulfil. The case is, however, different if we consider the broader division between Brahmans and non-Brahmans, the former being little more than 15% of the population of the Province, and yet commanding over $\frac{3}{4}$ of the wealth and opportunities. But these, also, cannot be separated into distinct administrative units for the same reason of inextricable mixing of the Brahman and non-Brahman elements. The divergence of interests between these two sections of the Hindu population in Madras is, however, more artificial than real, a temporary phase, which must disappear the moment more natural lines of cleavage make themselves manifest.

Except, therefore, for the separation of the Telugu from the Tamil districts; and a regrouping of the Malayali and Kanarese speaking peoples, there is little to justify a more intensive dismemberment of this Province.

Bombay: The Presidency of Bombay was formed, in its present size, about 1818, when the last of the

Peshwas was finally overcome, and the Maratha Empire became a thing of the past.*

In the existing districts of the Province, there are at least three linguistic groups, definitely marked off from one another, and corresponding to the three administrative Divisions of the Presidency, *viz.*:—the Northern Division, or Gujerat; Central Division, or Maharashtra; and the Southern Division, or Karnatak.

The city of Bombay is *sui generis.* With about 6% of the population, it has nearly ½ the wealth of the presidency. Its population is mixed; its culture (?) complex and exotic; its requirements and possibilities for economic development radically different from those of the other parts of the Province. Even Geographically it is separate,—an island linked to the mainland by one causeway and two railways. No other capital city in India, not even Delhi, is in a position like that of Bombay.

Of the 17 odd million people in the Province, 93·36 lakhs speak Marathi, 34·26 lakhs speak Gujerati, 25·98 lakhs Kanarese, and 13·99 lakhs western Hindi. This last group is centred mainly in the districts of Khandesh, which have more affinity with parts of the Central Provinces than with Bombay proper.

These linguistic areas of the Bombay Presidency have distinct cultural and economic characteristics, which stamp on each such area an individuality of its own. The Gujerati speaking peoples live in a fairly

*Sind was added to it in 1843, simply because it was more convenient of approach by sea from Bombay, than from any of the other then existing British Provinces. The Punjab was not yet conquered, and the United Provinces were separated from Sind by an arid, trackless desert, stretching for hundreds of miles, and including territories of Indian States, which were not yet all so utterly subordinate and easily accessible as they have since become.

rich area of productive land, the value of which is enhanced considerably by their immemorial trend towards commerce. Gujerat is a province of shop-keepers par excellence, including in that term both traders and industrialists. Even in Bombay City, the trade and Industry are held almost exclusively by Gujerati speaking peoples. Culturally, economically, geographically, this is a distinct Province, whose local consciousness has of late grown to such dimensions that the Gujerati-Marathi rivalry in the public life of the Province is becoming a prominent feature, and is causing grave uneasiness as to the future if the Province is kept intact in its present form.

The Marathi speaking peoples number 93·36 lakhs, or more than half the population of the Province. Unlike Gujerat, Maharashtra is mainly plateau land, situated on the leeside of the Western Ghats, and so deficient in rainfall, which makes cultivation,—initially difficult because of the poverty of the soil,—more arduous because of the inadequacy of the water-supply. The region is, however, mainly agrarian, with supplementary cottage industries that can hardly hold their own against the fierce competition of machine-made goods. Even in commerce, the Maharashtrians are backward, if not unknown. Their tradition and history incline them more to Government service and the new professions, than to any private enterprise of their own initiative. Their earlier initiation into English education and British administrative methods make them appreciate all the more keenly the advantages of material wealth open to the modern entrepreneur in mechanised industry and overseas commerce. Hence they subconsciously resent all the more keenly the

advent of competition from their later educated fellow citizens in fields of public service and professions, which had, until comparatively recent times, been almost their monopoly. The social problem in Maharashtra is not complicated, perhaps, to the same extent by the presence of a large number of the Depressed Classes, as in Gujerat. But the Brahman-non-Brahman rivalry seems to be almost as keen in Maharashtra as in Madras. It has been fanned into a fierce flame in recent times, and threatens to rend asunder the province, unless the artificial stimulus to such unnatural divisions is effectively counteracted.

The Kanarese speaking districts have also an individuality of their own, though they are numerically much fewer, and economically, perhaps, not so distinct an entity as the peoples of Gujerat and Maharashtra. Unless a regrouping of territories takes place, with due regard to ethnic or linguistic solidarity and economic unity, at an early date after the advent of the Federation, these regions and the peoples inhabiting them might find it difficult to realise their separate individuality, and the distinct economic or cultural possibilities of their geography or history. But the consciousness of individuality is there, and rapidly growing; and the perception of the injustice usually felt by a backward minority is not the less keen, because it is not so vocal as that of Sind *vis-a-vis* the Presidency proper, or of Gujerat against Maharashtra, and *vice versa.*

The Konkan,—a strip of land at the foot of the Western Ghats, running along the seashore,—has climatically the most marked individuality of its own thanks to the full blast of the South-Western Monsoon

to which it is exposed. But the population of this region is too small, and its economic possibilities too restricted, to justify a fruitful demand for separate political organisation.

On the whole, then, the present Province of Bombay has in it at least four distinct provinces, on definitely marked linguistic and economic lines. If to these we add the city of Bombay, with its suburbs stretching some 20 miles from its northern limits,—and which has an unquestionable individuality of its own, socially, economically, as well as historically,—it is possible to split up the present Province into at least five distinct, more rational and homogeneous units, than the existing medley of historical accident and administrative convenience.

Bengal: The earliest of the Provinces of British India, Bengal has, however, undergone more changes of boundaries than any other province of a comparable size and history. Recognised as the premier Presidency by the Regulating Act of 1773, Bengal was enriched, at various dates, by the additions of Agra, (1805), and Assam (1825), Oudh (1856), the present Central Provinces (1853), and part of Burma (1824-1853). Bihar and Orissa, too, originally formed part of Bengal, though they have been separated from the older organisations since 1911.

The first separate existence as a Province came to Bengal in 1853; and the first-attempt at its dismemberment was made by Lord Curzon in 1905*, when he separated some of the eastern districts of the Province

*Assam was made a Chief Commissionership in 1874, but we cannot rightly call it an instance of dismemberment for Bengal.

and joined them to Assam, calling the new unit the Province of Eastern Bengal and Assam. This Scheme was modified by the annulment of the Partition; the creation of Assam into a separate Chief Commissionership; and the separation of Bihar and Orissa into a Province by themselves in 1911. Agra had, indeed, been separated long before, in 1834, when the British districts in the Gangetic valley above Benares were formed into the North-Western Province of Agra. The territories of the Mahratta Prince in Central India, declared lapsed in 1853, were at first attached to Bengal, but were in 1861 made into a separate Chief Commissionership; while an independent province of Burma was formed in 1889 out of the acquisitions or annexations of the Burmese districts since 1824.

The Province of Bengal, as it exists to-day, is the richest and most homogeneous of all Indian Provinces. Geographically, it is formed, in the main, of the deltas of the Ganges and the Brahmaputra together with the numerous tributaries of these mighty streams. Its homogeneity is reinforced by practically one speech spoken throughout the Province,—Bengali,—by 46·4 out of 50 million of its people, or over 92·5 per cent. The rich alluvial soil, drenched with copious rainfall from the Bay monsoon, and by the waters of innumerable rivers, yields good harvests of all kinds of grain and commercial crops. Thanks mainly to the enterprise of non-Bengalis,—Europeans as well as Indians, —many new industries have also been developed, of which Jute has the pride of place for more than one reason. Close to the rich timber and rice-land of Burma, the tea-gardens of Assam, the coal and iron mines of Bihar or Orissa; and gifted with excellent

harbours at Calcutta, Chittagong, and Dacca, Bengal has developed an extensive foreign commerce.

The only rift in the lute, so far as Bengal is concerned, is to be found in the difference of religion in its population. Hindus account for 21·57 million, or 43·04 per cent; while Mussalmans number 27·5 million, or 54·87% of the population. There is a tendency among the Muhammadans all over India to-day to seek to mark themselves off as belonging to a different race and culture from that of the rest of their Indian fellow-citizens. In Bengal, however, the Mussulman is mostly the descendant of old Hindu converts, as is evidenced even now by the use of the Bengali speech by the Muslims along with the Hindus. The Mussulman, moreover, being poor, is dependent on his rich Hindu brother; and adopts the latter's ways and ideas to an extent that the consciousness of Communalism is not able altogether to shake off. The Hindu predominates still in the Landlord class, as also in the Professions, Commerce, and Industry,—though, in the last named, the share of the native Bengali is extremely limited. The Mussulman is tiller of the soil, living in rural parts, mostly in the Eastern districts, and altogether too backward to be aware of a different culture, even supposing he had a distinct culture of his own in Bengal. Crowded and extensive as the Province in its present boundaries is, it is, accordingly, impossible to suggest a further sub-division,—except, perhaps, for the city of Calcutta, which occupies in many respects a position similar to Bombay. Calcutta is, indeed, more dominant and influential in the life of the Province than Bombay, chiefly because of the homogeneity of Bengal. Nevertheless, Calcutta, like Delhi, could be

easily carved out into a Province by itself. But the rest of Bengal, at least in the plains, seems to be an integral unit, and will remain such, so long as our present ideas of political organisation and constitutional machinery last.

United Provinces: What we now-a-days call the United Provinces of Agra and Oudh were not always known by that name. For 30 years after Agra and the Mughal districts were won in the war of 1803-5, they remained part of the mammoth Province of Bengal. They were formed into a separate Province,—called the North Western Province,—only in 1834, when the East India Company ceased to be a trading organisation in India. For another 43 years Agra remained by itself as a Province, even though Oudh was annexed in 1856 from its Mughal ruler. Since 1877 the two were united; and their designation was changed to the United Provinces of Agra and Oudh in 1901, when some of the districts separated from the Punjab adjoining the Indo-Afghan Frontier were made into a new Province called the North-Western Frontier Province.

Set in the heart of Hindustan, this Province is largely agricultural. Only 10% of its population live in towns of such recent industrial importance as Cawnpore, or of such historic fame as Agra and Lucknow, Allahabad and Benares, Mathura and Hardwar. Geographically as well as racially, the Province is homogeneous,—84·50% of its population being Hindu, and only 14·84% Mussulman. Over 99% of the population speak Western Hindi. Though there is a tendency to distinguish between Agra and Oudh, owing to some slight difference in traditions of culture, it is impossible to demarcate between the several districts,

or groups of them, in this Province, on any rational basis. The Land Revenue Settlement offers a faint dividing line, if one were really needed. While in Lucknow districts are mostly Taluqdari,—260 such estates in Oudh comprise 2|3 of the area of that Province, paying only 1|6 of the Land Revenue,—the Agra Districts are "permanently" settled with the Zamindars on the Bengal pattern. Provincial sentiment, however, is by no means so pronounced as in Bengal, though these regions may well claim to be the home and centre of what is perhaps the finest in ancient Hindu as well as Muhammadan culture. Oudh was the birth-place of Rama, Agra the capital of Akbar. Ancient Benares and modern Aligarh are both in this Province, which can claim to be the homeland of the Buddha and Mahavir. The huge size of this unit, its dense population, and its immense economic resources, make it desirable, however, to administer it on some more modest arrangement than that of a single Governor's Province.

The Punjab: While the United Provinces are a land of Taluqdars, or large landholders, the Punjab, another agricultural Province, is a land of peasant proprietors. With an area about 7% less than that of the adjoining Province, it has a population less than half that of the United Provinces. It is a landlocked tract, watered by the five great tributaries of the Indus, which gives its modern name to the entire country. But for these mighty streams, with an annual wealth of the alluvial soil they bring; and but for the vast irrigation works constructed along their banks, this would be a desert province, unyielding to the toil of man any but the most meagre maintenance. To-day,

however, it rivals in wealth and importance all the older Provinces. Its historic tradition goes back to the days of the Aryans at least; and, having ever since been the first to sustain the shock of foreign invasion, this Province has always retained a martial spirit and love of independence which elsewhere in India are noticeably lacking. Of its 23 odd millions of population, 18·68 million speak Punjabi or some form of it; while 3·43 million speak Western Hindi. From the linguistic or economic standpoint, the province appears to be a homogeneous block, and admits of a uniform treatment in administration, which is, however, considerably modified by the existence of Communal cleavage.

In the Punjab, the Muslims number 13·33 million, or 56·55% of the total population; Hindus, 6·33 million, or 26·84%; Sikhs, 3·04 million, or 12:98%. The bulk of the Mussulman population is in the Western districts. The Muslims of this province cannot all be classed as converts from Hinduism, at least in the recent past. They are a sturdy race, with a tradition and a history of their own, of which in recent times they have become increasingly conscious. Opposed to them stand the Sikhs, who held the Province less than a hundred years ago, against both the Muslims and the English. They are a small Minority in numbers, but in wealth and industry, in martial tradition and love of independence, by no means negligible. Distinct in religion, they have and nurse bitter memories of cruel persecution at the hands of the Mughal Emperors, which make them still irreconcileable to their Muslim fellow-citizens. Sikh aid in the critical hour of 1857 having been materially useful in retaining the hold of the

British upon the country; and Sikh enlistments in the Indian Army since that time having always maintained a high level, British sympathy towards this sturdy race of intrepid warriors has begun to decline only in very recent years. Like all Minorities conscious of their historic individuality, and yet afraid of their future in an age when the mere weight in numbers may tell, the Sikhs in the Punjab have adopted a policy, little distinguishable, in its essential particulars, from that of the more communally minded Hindus or Muslims.

The Hindu Minority of the Punjab is, essentially speaking, indistinguishable from the Sikhs, except perhaps for the economic characteristics. While the Sikh is mainly a cultivator, the Hindu is a shop-keeper, merchant, banker, or industrialist. If he has interest in land, it is, generally speaking, that of a mortgagee rather than that of a farmer. While the Sikh occupies the centre of the Province,—with Lahore and Amritsar as his greatest headquarters,—the Hindu is found in large proportions in the Eastern Districts. In the latest political groupings or affinities, the tendency has been more and more noticeable of a close alliance between the Minority Communities, though efforts are becoming more pronounced and fruitful in creating a Centre Party, or the Unionists, of all the three Communities.

Bihar and Orissa: As a distinct Provincial entity, Bihar is not even a generation old, while Orissa comes into separate existence only from 1936. Bihar is a Hindu Province, 82·31% of its population being Hindu, and only 11·32% Mussulman.* The first home of

*These figures relate to the combined province of Bihar and Orissa. The latter has only 3% Muhammadan population. In Bihar 96% speak Hindi or Hindustani, while in Orissa over 80% speak Oriya.

historic Imperialism in India, Bihar is almost wholly agricultural, while Orissa has large mineral and industrial enterprises. Racially, too, these two units are distinct, as is shown by the different languages in common use in these two units. It is therefore, but fit and proper that Orissa should have a separate recognition and a distinct existence. But it is a poor Province, with a heavy leeway to make up in nation-building departments. Its resources are believed to be very considerable; and so the future is by no means too gloomy.

The Central Provinces: The Central Provinces were formed, in 1861, out of the lapsed dominions of the Rajah of Nagpur. In 1903 the Nizami Province of Berar was transferred by the Nizam in perpetual lease to the British Government; and the latter appended it to the then existing Chief Commissionership of the Central Provinces. Together these were raised, in 1920, to the status of a Governor's Province; and in the Government of India Act, 1935, Section 46, the same status is continued. Berar remains, for administrative purposes, a part of the Central Provinces, and in official language is coupled with it. But, as a refinement of political casuistry, Section 47 of the Act of 1935 provides that the sovereignty in Berar is that of the Nizam, who is supposed to have, by agreement with the King-Emperor, transferred the administration and governance of the Province to the British Government, which, by the Act of 1935, Section 46, makes it part of the Governor's Province called the Central Provinces and Berar.

This is a landlocked Province, surrounded on almost all sides with Indian States. It has, linguistic-

ally speaking, the peoples of all its neighbour Provinces, Bombay, Madras, Bengal, Orissa, and the United Provinces. Of its 15½ million people,

5,432,265	speak	Marathi;
4,825,293	,,	Western Hindi
3,239,030	,,	Eastern ,,
950,587	,,	Gondi
336,648	,,	Rajasthani
263,133	,,	Oriya
152,838	,,	Korku
130,393	,,	Telugu

The two main languages, however, of the Province, are: Marathi and Hindi, which account for more than 90% of the population. There is a sprinkling of other languages; but they are to be found in much greater numbers in the adjoining provinces or States. Hence, if a linguistic redistribution of Provinces were to take place, the Central Provinces afford one of those examples, in which the present entity will hardly have a trace left.*

* That the linguistic distribution of the people of India does not follow the provincial grouping may be seen from the following table.—

Language	Number of people speaking	Spoken in States and provinces.
Hindi : Western	71,547,071	U. P. Central India; Punjab; Hyderabad, Bombay; Madras; Rajputana; Gwalior; Mysore C. P. & Berar; Bengal; Baroda; Ajmer-Merwara ; Delhi ; N. W. F. Province; Baluchistan;
,, Eastern	7,867,103	Western India States
,, Bengali	53,468,469	Bengal, Assam, Bihar Orissa; U. P..
Telugu (Andhra)	26,373,727	Madras, Hyderabad, Mysore. C. P. Bombay, Bihar, & Orissa.
Bihari	27,926,559	Bihar & Orissa

(*Continued on page* 21)

The two main blocks of the Hindi - speaking and Marathi-speaking districts make each a fairly contiguous whole. The province of Berar and the districts

(Continued from page 20)

Language	Number of people speaking	Spoken in States and provinces.
Marathi	20,889,658	Bombay; C. P.; Hyderabad; Madras; Mysore; C. India.
Tamil	20,411,652	Madras; Mysore; Hyderabad; Bombay, &c.
Punjabi	15,839,254	Punjab; Delhi; N. W. F. Province; Kashmir; Bombay; Rajputana; Baluchistan; U. P.;
,, W.	8,566,051	Punjab; Kashmir; N. W. F. Province; Baluchistan.
Rajasthani	13,897,896	Rajputana; C. I.; Punjab; Gwalior; Ajmer-Merwar; Hyderbad; Kashmir; Bombay; C. P.; Mysore &c.
Kanarese	11,206,380	Mysore; Bombay; Hyderabad; Madras; Coorg &c.
Oriya	11,194,265	Orissa; Madras; C. P.; Bengal; Assam, &c.
Gujerati	10,849,984	Bombay, W. I. States Agency; Baroda; Rajputana; C.I.; Madras; C. P.; Hyderabad, Gwalior, &c.
Malayalam	9,137,651	Madras; Coorg &c.
Kherwari	4,031,970	Bihar & Orissa, Bengal, &c.
Sindhi	4,006,147	Sind; W. I. States; Baluchistan; Rajputana; Punjab.
Pahari W.	2,325,916	Punjab; Kashmir, &c.
Bhili	2,189,531	Bombay; Baroda; C. I.; Rajputana; Gwalior, &c.
Assamese	1,999,057	Assam.
Gondi	1,846,878	C. P. C. I.; Hyderabad; Madras, Assam, &c.
Pashto	1,636,490	N. W. F. Province ; Baluchistan; Punjab; &c.
Kashmiri	1,438,021	Kashmir.
Kurukh or Oraon	1,037,142	Bihar & Orissa; Bengal; C. P.; (States) Assam.

These account for about 300 million people, leaving out Burma. A good proportion of these may be familiar with one or the other neighbouring or kindred language. There are thus, really speaking, not more than 9 or 10 principal languages in India, and of these Hindi or Hindustani in some form, may be said to be familiar to at least 45 % of the population, if not more.

in the Nagpur division on the West are Marathi-speaking; while the remaining 14 districts, in the east and the north of the Province, are mainly Hindi-speaking. Economically, too, there seems a division, Marathi districts being gifted with the rich black cotton soil and the textile industry founded on its produce; and the Hindi districts being wheat growers and of forest produce. 86% of the population is Hindu, and another 8·72% of tribal religions, leaving less than 5% to follow the Muslim faith.

Assam: The smallest and the least developed of the Governors' Provinces is Assam. First separated from Bengal in 1874, it was made into a Governor's Province in 1920. It is still a Province without a University of its own, or a High Court. Its population is centred in the two valleys of the Brahmaputra and the Surma, and consists of more than half the number Bengalis, while only about 20% are pure Assamese by birth. The Province is mainly hilly, rich in forest produce, tea-gardens, and allied products. Its possibilities for more intensive economic development are hindered largely because of its inaccessibility. About 57·20% are Hindus; 31·96% Mussulmans; and 8·25% Tribal religions.

Sindh: In Sindh the desire for separation from Bombay originated in a consciousness, however vague, of cultural differences. It was enforced by the obviously distinct geographic configuration and economic characteristics of the country, and intensified by the desire of the Mussulman majority in the Province to have one more Province under Muslim rule in the era of Responsible Government and Provincial Autonomy. The Hindu Minority opposed from the beginning the

demand for separation, not only because they realised the disproportionately greater strength and influence they wielded in Sind because of the union with the predominantly Hindu Province of Bombay, which would be lost on separation from Bombay; but also because of their recognition that the economically weaker position of the independent Province of Sind would necessarily expose them to relatively higher burdens of taxation,—the Hindus being the richer and more enterprising community.

In his life and culture, the Sindhi Hindu resembles more the Mussulman neighbour on the West of India than the Hindu fellow-citizens across the desert, or beyond the sea. The Hindu in the rest of India felt with the Sindhi Hindu an anxiety as to the future presaged by the separation of Sind from Bombay, and the institution of a solid block of Muslim provinces all along the Northern and Western boundaries of the country. The Indian Mussulman in general probably has no real desire to secede from the rest of India. The days of Pan-Islamism seem to be receding in a shadow, if one is to judge from the markedly rationalist life and secularist policy of the Muslim countries in Western Asia or Africa. The Khilafat has been abolished from the land of the Khalifas; and Religion, at least of the more aggressive and fanatical sort, appears to be at a discount in Persia and Turkey, Egypt and even Iraq. *Real politik* must, therefore, inevitably teach the Indian Mussulman the futility of secession, either for separate existence as a block of their own, or in any hope of closer union with other Muslim countries of Western Asia. But even if the constitution of Sind into a separate Province is not to be regarded as a fore-

runner of a centrifugal movement, it is not equally certain that the Muslim authors of the idea of Sind-separation were utterly innocent of the possibility of holding the Hindus of Sind as a sort of hostages for the good behaviour of their co-religionists in those other provinces of India where the Mussulmans were in a minority.*

In a democratic age, it would be impossible, in fairness to deny the right of every distinct unit to develop its own resources and individuality as it seems best to the leaders of that unit. In theory, therefore, there can be no objection to the separation of Sind, or any other districts from another existing Province, if the people of the area demanding separation have a distinct individuality, and are possessed of resources to develop that individuality. In the case of Sind, the opinion was generally held that, on its own, the Province will be too poor to support the burden of a modern civilised administration. True, there were projects afoot, such as the Sukkur Barrage, which, when in full working order, were estimated to make up for much of the deficit calculated to result in the administration of a separate Sind. But the geographic peculiarities of the soil, and the action of the river water on the country around, seem to have been not fully considered at the time the project was taken in hand. Subsequent developments give reason to believe that the calculations of profit from the land sales, or water rates, or

*Says the Indian Statutory Commission (Report Vol. I. p. 59):—"This demand (for the separation of Sind) has gathered strength not so much in the homes of the people, or among the Muhammadan cultivators of Sind, as among leaders of Muhammadan thought all over India, to whom the idea of a new Moslem province, contiguous to the predominantly Moslem areas of Baluchistan, the North-West Frontier Province, and the Punjab, naturally appeals as offering a stronghold against the fear of Hindu domination.

increased Land Revenue in the canal areas were made more enthusiastically than accurately. The effects of agricultural Depression all over the world have something to say in mitigation of the error in calculation. But even making all allowance for such factors, the fact remains that Sind will continue to be a deficit Province, needing substantial subvention from the common purse for the better part of a generation after its separation.

The one remedy to counteract this threatened deficit—to curtail drastically the overhead charges of administration,—including the excessive salaries and emoluments of the public servants in all ranks,—is impossible to attempt, so far at least as the higher ranks are concerned,—as long as the British Government remain the Trustee and guardian of such vested interests. The deficit in Sind, as in all other Provinces similarly situated, is measured on the present standards of administrative costs and equipment prescribed by an alien bureaucracy; and not in terms of that real backwardness which shows itself in the low percentage of literacy, the high percentage of mortality, or the undeveloped natural resources. The economic resources of Sind, and, *a fortiori*, her cultural possibilities, will not be realised merely because of separation from Bombay; and it is not improbable that the backward nature of the majority of the Sind people may operate actually as a drag upon any improvement over existing conditions,—by no means ideal,—of life in Sind. On the other hand, it must be recognised, that separation does constitute the first condition indispensable for political self-expression and fulfilment for such a distinct unit as Sind undoubtedly is.

Orissa: The same logic applies to the separation of Orissa, though, perhaps, the future in that unit may not be quite so gloomy. In a manner of speaking, Orissa is less developed than Sind at the starting point of a separate existence. Thanks mainly to the enterprise of the Hindu merchants of Sind, that Province has already a degree of advanced economic life, which in Orissa is lacking,—at least so far as the children of the soil are concerned. But Orissa is gifted with mineral resources, and has industrial possibilities, which are manifestly lacking in the Western province. Besides, Orissa is not quite so badly divided internally as Sind seems to be, thanks to the cleavage of the Hindus and the Muslims. It is possible, therefore, to hope, that though Orissa starts, like Sind, as a deficit Province, it will be able, given reasonably favourable conditions, to wipe off its deficit, and make up its leeway in the equipment of a progressive province, in a far shorter space of time than Sind might be able to achieve.

N. W. F. Province: The North-West Frontier Province was made into a separate unit by Lord Curzon in 1901. Districts from the Punjab and certain Tribal areas were joined together into a separate Frontier Province, mainly because the administrative principles and the legislative enactments of the more settled province of the Punjab would not be suitable in these more backward districts. Upto 1932, the N.W.F. Province was a Chief Commissionership, where the reformed constitution under the Montford regime was introduced only a few years ago. The Act of 1935 accepts it as a Governor's Province. It is a solid block of almost wholly Muslim population, its mountain regions,

intersected by arid valleys, making any hope of further economic development illusory.

We need not notice more particularly the smaller units called Chief Commissionerships. They have,—except perhaps in Coorg—no inherent principle of internal solidarity or regional homogeneity, which could foster a consciousness of separate individuality. They are and remain mere administrative divisions, which present no features of interest to a student of political organisation, nor even to an adept in social psychology. They may attain some interest in the future only when we are able to make a radical redistribution of the component units of India.

Character of Existing Provinces

The Provinces so constituted, from time to time, necessarily lacked cultural unity, geographic solidarity, or historic continuity. Every one of them owes, as it exists to-day, its position to considerations of political necessity or administrative expediency. If any of them still show, notwithstanding this history, local unity or homogeneity, that is rather fortuitous than the result of deliberate intention. That this charge is not a mere matter of National prejudice is evidenced by the devices, increasingly employed of late, to cut new furrows and make new cross-sections of the unit which showed, as Bengal, or could show, an inconvenient degree of local patriotism overriding the sentiment of Imperialist solidarity.

We shall review some of these devices hereafter. Let it be added here, however, that the sole *raison d'etre* of any provincial sentiment in this country is to be found in the chance it affords for the local culture

to be fully developed, and local resources to be properly exploited by indigeneous skill and energy. If given a separate statehood, these might afford an opportunity for that fullness and richness of life, which, in the larger mass, may never fall to the share of the less aggressive components. Under the conditions in which the provincial units have been set up in this country, this one justification loses much of its force; since the supreme British authority would, for its own reasons encourage Provincial sentiment or centrifugal tendency up to a point, but up to a point only, and no further. There is, of course, no question of maintaining the integrity of India as she has been for the last hundred years or so. But in so far as the fullest possible growth of any Province should prove incompatible with the maintenance of the British Raj, or the carrying out of the British policy, the local sentiment would be scorched and withered and denied expression, no matter how laudable it may be in intention, and how fruitful in result.

The Nationalist Indian may have his own opinion on this question. The sentiment of Indian nationality may be, historically speaking, of relatively recent growth,—at least in its present form. But the phenomenon of an Indian Empire,—the ideal of Indian unity —is no strange occurrence, or foreign importation. In its present form, the growing strength of the Nationalist sentiment, in all classes of the Indian people, is undoubtedly due to the perception of the economic and social possibilities for a united and self-governing country, on a scale like India's. Against this sentiment of Indian nationality runs the still unextinct sentiment of local, or parochial feeling, which, with particular com-

munities, like the Marathas in Bombay or the Sikhs in the Punjab, is associated with historic memories too deep to be obliterated even after a century of national unification.

Crosswise to this line of division, runs another fissure,—also historic in its origin,—but mainly of recent stimulus, known as the Communal cleavage. From 1858, when the administration of India came directly under the British Crown, till 1909, the British Government maintained a policy of impartiality as between the Hindus and the Mussulmans, and so encouraged, albeit unconsciously, a sentiment of national solidarity, which had all but succeeded in obliterating the Communal line. The evolution of political consciousness in the Indian people, as manifested by the organisation of a National Congress, in which all communities joined at first to voice the common national grievances and express the national ambitions or aspirations, alarmed the Rulers. The more sagacious among them sought refuge in the ages-old maxim of Imperialism all over the world: Divide and Rule. The only possible and conveniently handy line of division was to be found in the historic antagonism between the Hindus and the Muslims. Because the mass of either community was woefully uneducated, and so unable to perceive their own true interests owing to the fog of religious superstition amidst which they lived, the encouragement to one community,—preferably the Minority community, which, being weaker because of its backwardness, was bound to be more suspicious of the Majority, and sympathetic or responsive to the British overtures,—easily set aflame the smouldering embers of historic dissensions.

The first demand for separate Communal representation was urged, officially, in 1906, when a Muslim deputation waited on the then Viceroy, and submitted to him that in a system of Joint Electorates, the Minority Community could not secure representation in adequate proportion to the numbers of the community, its political or military services, or even by representatives really acceptable to the community. They accordingly demanded separate representation, through separate Communal Electorates, on all local self-governing bodies, as also in the Provincial Legislatures to be instituted under the so-called Morley-Minto scheme of Reforms. The principle of separate representation for the Muhammadans, through their Communal Electorates, was accepted by the Government of India, and given effect to for the first time, in the Act of 1909.

Meanwhile, the communal consciousness of the Muslims grew apace, though they do not seem to have overlooked altogether the somewhat conflicting demands of the Indian national solidarity. By the Lucknow Pact between the chief political organisation of the Muslims and the Indian National Congress, arrangements were made to extend further the principle of separate Communal representation, giving substantial weightage to the Mussulmans in the Provincial legislatures of the post war era where the Muslim community was in a minority*. In the Provinces where they were in a majority, it was thought unnecessary to provide for a statutory majority being assured to them. But, instead, a clause of the Pact provided that:

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*The arrangements made under the Lucknow Pact, and as given effect to in the scheme of Reforms known as the Montford Scheme, are shown in the following Table, taken from the "Indian Statutory Commission's Report" (Vol. I., p.189).

"No bill, nor any clause thereof, nor a resolution introduced by a non-official, affecting one or the other community (which question is to be determined by the members of that community in the Legislative Council concerned) shall be proceeded with, if three-fourths of the members of that community in the particular Council, Imperial or Provincial, oppose the Bill or any clause thereof, or the resolution."

Table showing the position of Muslim Members in the Provincial Legislatures in 1926, and compared to that provided in the Lucknow Pact

Province	% of Muslims to total Population	% of Muslim Voters to Total in General Constituencies	% of Muslim Members to Total Members	Present % of Muslim elected Members to total elected Indian Members.	Present % of Muslim Members to Total in seats elected from Indian General (communal) constituencies	Lucknow Pact Percentage
Punjab	55.2	43.7	40	48.5	50	50
U. P.	14.3	14.1	25	30	32.5	30
Bengal	54.6	45.1	30	40.5	46	40
Bihar & Orissa	10.9	10.9	18.5	25	27	25
Central Provinces	4.4	8.4	9.5	13	14.5	15
Madras	6.7	4.7	10.5	14	16.5	15
Bombay	19.8	17.7	25.5	35	37	33.3
Assam	32.3	30.1	30	35.5	37.5	...
Legislative Assembly	24.0	16.5	26	34	38	33.3

All Nationalist opinion is agreed, however, that separate Communal Electorates are the most effective barrier against the sentiment of national solidarity. They tend to stereotype an obsolete and unprofitable line of demarcation, intensifying internal antagonism. and obstructing the growth of real self-government. Communal lines are, moreover, seldom identical with real economic class distinctions. They are stressed by those elements in the Indian communities themselves, which, unable to secure their own prominence by the open door of general competition in Joint Electorates, insist upon separate constituencies which afford them better chances of success. They may have been serviceable in rousing consciousness of the economic and political backwardness of given communities. The political power derived by representatives of such communities, chosen in separate Communal Electorates, may have been used, in competent hands, to make up in recent years the leeway of advancement which the Muhammadans had been undoubtedly lacking in. But once they are admitted into the body politic, they have a nasty tendency to persist, and perpetuate the unnatural division they imply. Even if one admits this service of the Communal constituency to particular sections of a given community, they must be pronounced to have been purchased at too heavy a cost to the sentiment of National solidarity, and the possibilities of all-round progress; to be a needless and harmful smoke-screen against the emergence of realistic lines of economic issues, and the consequent stimulation of the efforts at real social reconstruction.

In so far as a Minority community, like the Mussulmans, is not confined to one Province, but is scatter-

ed all through this vast country, the existence of separate Communal Electorates prevents the growth even of that degree of provincial sentiment, which may be depended upon to hasten the development of the local resources and the advancement of the local people. Their continued existence creates a sort of vested interests for communalist adventurers, which must for ever render precarious peace and harmony within the country and genuine co-operation among its peoples.

The example of the Muslims in obtaining separate Communal Electorates for themselves has encouraged other communities of India,—not distinguished from the bulk of the population even as much as the Muslims are from the Hindus, nor having the same argument of numbers,—to demand separate representation for themselves, Indian Christians and Anglo-Indians form microscopic minorities, while Europeans in India have not even the excuse of a permanent interest in the country to justify such special recognition. The Depressed Classes in the Hindu fold; the backward but numerous Non-Brahmins of Madras or Maharashtra; the Scheduled Castes and Hill Tribes,—all demand separate constituencies for themselves, on essentially the same logic as that inspiring the Muslim demand.

Like the Muslims', their demand does not remain confined to the legislative constituencies only. There is a growing tendency to demand a stated minimum proportion for each such Minority in all branches of public services open to Indians. The Government of India have, since 1935, recognised the principle by a Resolution, which secures a guaranteed

minimum of appointments to the different communities in the public services of the country,—at what cost to the efficiency and integrity of public administration in this country the future alone can show.

The Communal line of cleavage is, however, not the most important line dividing the Indian peoples, even though it may, for the moment, seem the loudest. The peoples of both the important communities are so intermixed and scattered all over the country, and their economic relations cross and recross one another at such innumerable points, that the present emphasis on this line of demarcation cannot be taken to be lasting. So far as the centrifugal forces are concerned, —so far, that is, as the opposition between national solidarity and provincial patriotism goes,—the more dangerous factor is the growing local sentiment of such homogeneous units as Bengal, where the Hindu and the Muslim are both prepared to merge the much advertised Communal differences in the common cry of Bengal for Bengalis only.

Next to the Communal principle of division, the alien rulers of India have found, in the economic differences between classes and interests, another potent factor to keep the people of India apart from one another. There are, in the new Constitution, Special Electorates for Landholders and Industrial Labour; for Commerce and Industry; for Universities and Women, —not to mention the still further sub-division as between Indian Commerce and Industry, and European Commerce and Industry in India. All these necessarily result in obstructing the none-too-smooth growth of national solidarity, and so precluding the possibility of an effective, united opposition to British

Imperialism and exploitation of the Indian people. The existing state of Indian industry,—particularly the mechanised and large-scale specimens,—and of the local or overseas commerce in the hands of Indians,—does not really justify the separate class Electorates in addition to the Communal Electorates created in 1919. The racial constituencies, again, such as those for Europeans, for Anglo-Indians, and for Indian Christians,—all followers of the same religion,—provide another breeding ground for mischief, for which those who insist upon such special electorates can offer not even the ghost of a reason.

The position of the Indian Legislatures, under the constitution in operation since 1919, may be illustrated by the following Table.

Table showing composition of Provincial Legislatures (in 1926)

Province	Nominated Members (1)	Nominated to represent special Classes or Interests (2)	General.	Muslims.	Sikhs	Anglo-Indians.	Indian Christians	Europeans.	Landholders	Commerce & Industry	University.	Total
Madras ...	23	11	65	13	...	1	5	1	6	6	1	132
Bombay	20	8	46	27	...	...	...	2	3	7	1	114
Bengal ...	22	4	46	39	...	2	...	5	5	15	2	140
U. P. ...	20	3	60	29	...	...	...	1	6	3	1	123
Punjab ...	18	5	20	32	12	...	...	1	4	2	1	94
Bihar & Orissa ...	19	9	48	18	...	...	...	...	5	3	1	103
C. P. ...	11	7	41	7	...	...	...	...	3	6	1	73
Assam ...	12	2	21	12	...	...	...	...	...	6	...	53

1.—Col. 1 includes Executive Councillors and other nominated Members excluding those nominated to represent special interests or classes.

2.—Members nominated to represent special classes and interests include those for Depressed Classes, Anglo-Indians, Indian Christaians, Industrial Labour, and Miscellaneous.

Given this composition of the Provincial Legislatures, it was impossible for the consciousness of political power and a sense of governmental responsibility to develop. The fault lay, indeed, not wholly with the nature of the electorates, and the composition of the Legislatures formed out of such electorates. The fault was much more largely of the very basis of the Constitution prescribed by the Act of 1919. After elaborating with a flourish the goal of progressive responsibility in the governance of India, the authors of the Montford scheme contented themselves with a shadow of Responsibility in the Provinces. The system of Dyarchy, in which a certain number of the most important Departments of Government were excluded from the scope of Ministerial Responsibility, brought in the charge of the Indian Ministers only such Departments as had very little effective power. And if any Department provided some scope for nation-building activities, the financial conditions in almost every Province were such that no real improvement could be effected. The Executive, or non-Responsible branch of the Government, held a first mortgage on the provincial purse; and their Departments absorbed more than half the Provincial revenues. The Governor, moreover, had extraordinary powers of certification of the Budget or of any tax, should the Legislature in a homogeneous province refuse to be docile. When these extraordinary powers did not suffice, they could suspend the whole Constitution, as they did more than once in Bengal, or the Central Provinces, between 1921-30.

The Governor-General, again, had still more overriding powers. His leave was necessary prior to the

introduction of any legislative measure of importance in a Provincial Council; and his assent indispensable for making any enactment of a Provincial Legislature a valid law. He had powers of passing Ordinances overriding the law of the land. For close upon 4 years (1930-1934) India was practically governed by Ordinances. From 1921, when the Montford Constitution came into operation, to 1927, the Provincial Governments had to make financial contributions in aid of the Central Finances. Though these were discontinued from and after that date, the sources of revenue left to the Provinces, and the restrictions imposed by the Devolution Rules, were such that no Province could really start truly developmental projects. The central, and final, authority rested unquestionably with the Government of India, who were in no department responsible to the Indian Legislature; but who were responsible to the Secretary of State for India,—a British Cabinet Minister.

The devices, again, in the Provincial as well as the Central Legislature, of a nominated element; and of an Upper Chamber in the Central Government with an official majority, which made it more submissive than the Legislative Assembly, made the expression of Indian opinion on given questions but of little real effect. The bulk of the Central Budget was utterly non-votable; and that portion, which was theoretically subject to the Vote of the Legislative Assembly, could, in the event of an adverse Vote in that body, be always adjusted to the liking of the Governor-General by the device of Certification. There was, likewise, the provision in the Act of 1919, of the two Chambers of the Central Legislature sitting together in the event of a

difference of opinion in regard to any first class piece of legislation; but Government seldom utilised this power, as they found Certification more easy and effective.

It is needless to dilate further upon the elements of disunion and lack of solidarity in the Constitution of 1919. Provincial rivalries; communal jealousies; class antagonism; race prejudices; and the conflict between the Central authority *versus* the Provincial ambitions,—all these combined made it impossible to foster any measure of progressive, or responsible, government.

CHAPTER II.

GENERAL VIEW OF PROVINCIAL GOVERNMENT UNDER THE NEW CONSTITUTION.

Evolution of the Idea of Provincial Autonomy: It is in the ground, described in the preceding chapter, that the seed of Provincial Autonomy was sown. The Indian political leaders seem, at the commencement of the present century, to have realised that it was impossible to expect the British Government to part with any effective power in the Government of India, so far as the central authority was concerned. If the Indian people at all desired to be associated in the task of their own government, the only field open to them was in the provincial administration, under definite conditions and restrictions. They, therefore, raised the cry of "Decentralisation", and asked for a larger and larger measure of association of elected Indians in these bodies right upto the Provincial Government.

Upto the time of Lord Morley, British statesmen could not conceive of the possibility of Parliamentary Democracy in this country. After reviewing the changes he had proposed in the so-called Morley-Minto Reforms, Lord Morley declared, from his place in the House of Lords:

> "If it could be said that this chapter of reforms led directly or indirectly to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it."*

* House of Lords Debates, Dec. 17, 1808.

And though, within less than 6 years after this declaration, the outbreak of the world War compelled British statesmen to reconsider their position,—at least so far as verbal professions went,—the outlook in essence has remained undisturbed.

Self-Government as Conceived by Indian Leaders

The Indian leaders had, meanwhile, widened unconsciously their own outlook, and had learnt to think and speak of effective control of the entire governmental machine in their country. They were yet far from perceiving the true character of British Imperialism and Capitalistic exploitation in India. If the more sagacious among them had a glimpse of the real state of things, they were themselves much too closely linked, by the invisible ties of personal interest, and the mystic sympathy of identity of economic classes, with that system, really to desire a radical replacement of the entire system. The charge could, therefore, be made, with something more than merely a show of logic, that all they desired was the substitution of the brown for the white bureaucracy, Indian for the European exploiter. They had, indeed, no aim higher than the attainment of "Dominion Status" within the British Commonwealth of Nations, as the British Empire is euphemistically described by its admirers. The ideal of complete independence, and all that such an ideal would, if realised, connote, of responsibility, was openly disavowed, or silently dismissed as mere window-dressing, which would mislead no one. As for a radical reconstruction of Society through the use of political power, they were mostly innocent of the very conception of social justice, to be accomplished by such means. They, accordingly, still thought of

constitutional reform in terms, and on a scale, which, under the Government of India Act, 1935, may be claimed,—from the British side at any rate,—to have been met.

Scope and Purpose of the New Constitution

In the pages that follow, a picture is attempted to be laid out of the real nature and the exact extent of Provincial Self-Government conceded by the new Constitution. The possibilities of achieving any thing constructive or substantial with this new instrument are also considered hereafter. But, at this stage, it is necessary to add, as a general observation regarding the outstanding characteristic of the new Constitution, that the reservations expressly made; the conditions and limitations specifically imposed, and the directions in which,—and which alone,—any governmental action can take place at all, make it impossible to hope for any substantial relief from Imperialist burdens or exploitive policies.

Ground Plan of the Act of 1919

The Act of 1919 was alleged to be founded on four principles, *viz.*:—

(1) Complete popular control in local bodies, like the Municipalities, and freedom from outside control;

(2) First steps towards a progressive realisation of Responsible Government in the Provinces, consistent with the ultimate responsibility to Parliament of the Government of India;

(3) Supreme authority, in India, of the Government of India, subject to their responsibility to Parliament;

(4) Gradual relaxation of the control of Parliament in proportion as the principle of local responsibility and provincial autonomy develops.

Changes in the Act of 1935: In all these respects, the Act of 1935 professes to effect a radical change.

(1) Doctrine of British Parliamentary Sovereignty

The doctrine of Parliamentary supremacy and British Trusteeship of India is not altogether abolished. In fact, the inclusion of the Indian States in a proposed Federation of all India extends the theoretical sphere of British Parliamentary supremacy to those parts of India, which were, until the advent of the Federation, not expressly and indubitably under that supremacy, or sovereignty. In another Monograph of this Series, an attempt is made to evaluate concretely the contribution of this device of including Indian States in a single Indian Commonwealth to the progress of the ideal of Indian autonomy. In all the still remaining autocratic or discretionary powers of the Governor in the Provinces, and of the Governor-General in the Federation of India, the ultimate responsibility is to the Secretary of State and, through him, to the British Parliament. But, allowing for this, the admission of the principle of Responsibility in the Provincial as well as the Federal Government of India,—however restricted the sphere of activity of that Government may be, and however rigidly conditioned its exercise,—is claimed to be a change in the scheme of the existing Constitution, that, they claim, the Indian people must regard as a fulfil-

ment of the pledge contained in the Montford Report and the preamble to the Act of 1919*.

(2) Relaxation of Central Control

The relaxation, again, of the control or domination of the Government of India over the Provincial Governments, and the recognition of the principle of Responsible Ministries chosen from the Parties commanding a majority in the Provincial Legislatures, is claimed to be another indication of the same trend of policy, which the advocate of the British regime in India points to as the earnest of good faith and constructive statesmanship. The Responsibility of Provincial Ministries, in so far as they could be compact bodies with collective responsibility at all, is, as will be shown more fully hereafter, so circumscribed; the rules or conventions regarding the choice by the Governor of his Ministers so rigid; and the scope of action open to Provincial Governments so narrow, that there can be no real autonomy in the Provinces; much less a real independence of the Indian Government.

(3) The control of the latter in minor details here and there might be relaxed; but, in essence, the powers of the Governor-General, as head of the Federal executive, would, if anything, be more extensive and effective than under the Act of 1919, especially if the offices, of the Representative of the Crown,—the Viceroy proper,—and of the Governor-General are combined in one and the same individual.†

*"Whereas it is the declared policy of Parliament to provide for the increased association of Indians in every branch of Indian administration; and **for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire.**"

†Cp. Section 3, Government of India Act, 1935; also "Federal Structure" Chapter vi.

(4) The relaxation of Parliamentary Control is the logical consequence of the growth of self-Government in India; but, as will be shown more fully later, the Act of 1935 does not by any means correspond, so far as India is concerned, to the Statute of Westminster as applying to the Dominions. Parliamentary control is both real and extensive; and the Indian politician who ignores the numerous sections in the Act of 1935 which refer to this control, either in their intent or their effect, would only be proving himself ignorant of the very elements of Imperialist politics.

Peculiarities of Federation in India

It is unnecessary to go into the details, at this point, of the powers and functions of government distributed between the Provinces and the Central authority, under the Act of 1935, to lend point to the observations just made. But it is necessary to point out, even here, that the Federation in India will differ from all other Federations in the world in two important respects:—

(1) The component units are, as between themselves, not of equal wealth or status. While the Indian States who join the Federation claim a degree of local sovereignty and independent existence, which the British Provinces, being creatures of the supreme authority, can never be allowed to claim; the Provinces, in their turn, command a degree of economic development and general progress, which the Indian States confessedly lack, and may even be averse to. The motive forces in demanding, or working together in a common system of government, will also not be the same for these two classes of the Federal con-

stituents, as also their respective ideals and ultimate objectives.

(2) The other point of difference consists in the distribution of powers and functions between the Federation and its constituent units. While the Provinces are given, by Act of Parliament, definite functions exclusively of, and certain others concurrently with, the Central Government,—with an almost unquestioned superiority of the Central Government in the event of a conflict,—the States make over, or *delegate*, to the Federal authorities only such functions and powers,—and under such reservations and conditions,—as the Instrument of Accession of each State joining the Federation may prescribe. The Provinces are part of the Federation by Act of Parliament; the States become part of the Federation by an Instrument of Accession, signed by the Ruler of each State, under such terms, conditions, or reservations, as are made in the Instrument and accepted by the Governor-General.* The list of Federal subjects (Schedule VII to Section 100) includes 59 subjects, of which only 47 are of direct concern to the States. It is possible the Instruments of Accession would exhibit,—when the required minimum of these documents are executed,—a degree of similarity without which it would be impossible to run a machinery of the kind provided in the Government of India Act, 1935. Nevertheless, the whole *raison d'etre* of Federal authority in the States is essentially different from that in the Provinces; and, consequently, the working of these two parts in the central authority is bound to be radically different.

*cp. Particularly Sections 2 and 6 of the Act of 1935, as also Ss. 122—129 idem.

Sovereign Authority Outside India

Formed on these different,—and somewhat contradictory,—bases, the Indian Federation has two other points of weakness inherent in its very Constitution, which cannot speak too well for the future of the country collectively. (*a*) The supreme authority,—the complete sovereignty,—does not remain in India: It is vested in an outside authority,—the King-in-Parliament of the United Kingdom. There are directions in which the Federation of India cannot act, even if all the constituent units were agreed as to such action, simply because they have not,—collectively or severally,—the power to act in such ways. There are matters on which the Federation cannot legislate,—simply because there is no authority, either in the Federation or the units, to do so. And the most important of such matters for action or legislation is in regard to the modification of its own constitution. Without a concurrence of the British King-in-Parliament, there can be no change in the essential provisions of the Indian Constitution, however much the people of India in all parts of the country and of all classes may desire a change.

Supreme Power of the British Parliament

But while the Indian people can effect no radical change in the Constitution, the British Parliament has supreme authority to make any change it desires. The beginning of the new regime by an act of dismemberment,—the separation of Burma from India,—may be justified by respect for the right to self-determination of the people of Burma. The actual terms of that constitution does not afford any proof that the separation

of Burma is due solely to a recognition of the right of the Burmese people to self-realisation in their own way. Even granting that this was an act in the proper direction, the example may well suggest a separatist bend in the fundamental policy, which needs must weaken the authority of the Federation. Even the institution of Sind and Orissa as separate provinces may not unjustly be taken as illustrations of the tacit resolve of the British Government to allow no single unit so much strength as to make it a source of danger to the central authority. The coincidence of the Mussulman sentiment for separation, in Sind as well as outside, was a fortuitous help to British Imperialism, which would in no way be jeopardised, at least for half a century at the present rate of progress, simply because, both in Sind and in Orissa, the local people are much too backward to be really a match for British diplomacy.

The creation, moreover, of a Mussulman block all along the North West of India, adjoining the traditional Muslim countries of Western Asia is,—not a contribution to the realisation of the Pan-Islamic dreams. It is simply a sort of Damocles' Sword held over Nationalist India. If the latter desire the continued functioning of a united India, it must do so in loyal and subordinate co-operation with Imperialist Britain. Otherwise the centrifugal forces inherent in such acts would be unleashed to the undoing of Indian unity. The Punjab, Sindh, and the North-West Frontier Province are sufficiently contiguous, homogeneous, and strategically situated, to make the threat of secession more than a mere nightmare of the overheated Nationalist imagination. So long, however, as it may suit the

British Imperialist authority in India to maintain the unity and integrity of this country, the Federation will be supported and strengthened, despite all professions of regard for local autonomy. But the moment, the Indian Federation as a whole, or any component parts thereof, show signs of effective recalcitrancy against the British Imperial domination, the centrifugal tendencies will be encouraged, just as effectively as the Communal sentiment is at the present times fanned or checked precisely as the Imperialist policy needs.

There are thus inherent, in the 1935 Constitution of India, seeds of a Civil War. All the passions which lead to such conflicts are germinating; only the effective power to wage war is reserved exclusively to the representative of British Imperialism in India, the Govvernor-General. Even the States, which are supposed to join the Federation by a voluntary act, are not at liberty to secede from it to suit their own convenience. Once they join it, they will have no option to leave the Federation, however much their local interests or personal prejudices of the Rulers may suffer. Section 6(5) and Section 45(4)* suggest that, any radical modification of the Act of 1935, or the suspension of the Constitution provided for by that Act for over three years, may justify the Federating States to desire to withdraw from the Federation. But such a withdrawal, if it is at all possible under the Act, is not effected at the instance of the States individually. In fact, this oblique opportunity provided for the States to threaten withdrawal from the Federation, under specific contingencies, is, in reality, an implicit threat to the more determined of the Indian Nationalists bent upon com-

* See Federal Structure ch. III.

plete emancipation of this country from bondage to British Imperialism, that the latter would disintegrate the entire country if their "subversive" activities are pushed beyond a point suitable to the British notions of propriety in such matters.

Distribution of Powers and Functions

(*b*) The division of Powers and Functions, resources and obligations, between the Federation and its component units, is also made on the same basis of keeping intact the ultimate domination and sovereignty of Britain. When we come to discuss the resources open to the Provinces, we shall see more clearly how they are all crippled inevitably because of the need to maintain British supremacy intact. Even in the States, while theoretically only such resources and powers will be delegated to the Federal authority as the Ruler of each Federating State considers necessary for the proper working of the Federal Structure, the exigencies of the situation would enforce a minimum of delegation of powers, or surrender of resources from the State, which cannot but restrict narrowly all opportunities for local development. There are provisions, of detail as well as of fundamental principle, which make it beyond the possibility of a doubt that the regard for developing the sentiment of Provincial Autonomy is only in so far as it is not incompatible with British supremacy, or in so far as it could be made an effective weapon against the undue expression of unyielding Indian Nationalism.

The ability of the units is thus extremely restricted in achieving anything substantial for the welfare of the people under their jurisdiction. They have enough power to earn a bad name for themselves,—as lacking

in a political sense, or a sense of reality, or ability to do teamwork. But they have no means to undertake projects of national,—or local,—development in any material sense, if those projects do not chime in with the British Imperialist policy. The existence of Provincial Autonomy will only provide the Central authority with an excuse not to intervene and insist upon a certain minimum of administrative efficiency or progressive civilisation being maintained. Every Province has an immense leeway to make up—some more, some less,—in developing the resources of the territories and peoples in their charge. The States without exception are too backward not to have considerable lag in material development. But the presence of a heavy mass of unproductive debt, a hopelessly wasteful defence organisation, and of an excessively paid public service in all departments of government, make it impossible to find a surplus which could be expended on new projects of further development. Such resources, therefore, as may be available are pledged to the hilt, and for many more years to come, to the upkeep of these engines of British Imperialism, which would make the Provinces,—and, *a fortiori*, the States,—unable to raise the standard of living of their own peoples for a generation or more to come.

Centre vs. Units.

Does the Centre,—the Federation,—dominate, or the units preponderate? This is a difficult question to answer in the new Constitution. As already observed, there is every margin of effective authority reserved to the Federal Government, and more particularly to the Governor-General, to uphold the authority of the Central Government in every conceivable emergency.

And if that does not suffice, he can, by Proclamation, suspend the whole Constitution, abrogate the Federation, supersede the Legislature, and arrogate practically all power to himself.* A study of his "special responsibilities," detailed in Section 12 of the Act, co-related with a further study of the financial provisions in the Act, make it evident, that in every direction in which British hold upon India is to be maintained, the Governor-General is armed with powers and authority that would be proof against any ordinary means of being shaken or displaced.

But, though the Governor-General as the chief executive is empowered, in ordinary and extraordinary situations, to deal with every aspect of governing India, that does not mean that the Federal Government is equally powerful. The Governor-General is quite different from the Federal Government, which means the Council of Ministers of the Governor-General. The latter have very limited powers. The Provinces have a defined field of action, sufficient materially to detract from the authority and influence of the Federal Government, though not enough for the Provinces themselves to strike out upon original lines of local improvement. Under these conditions, it is impossible definitely and satisfactorily to answer the question put above. But it may be said that, on the whole, the authority and powers of the Central Government are maintained to a point, at which the exercise of real provincial independence becomes unlikely; and that, should any Province try a fall with the Central Government, even in the concurrent field of action, the chances are that it would come out second best.

*cp. Section 45, and *Federal Structure* ch. iii and vi.

Apart from the distribution of powers and functions between the Federation and the federating units, there are cases in which their action may have to be mutual and overlapping. Provisions have, therefore, been included in the Act to provide for such cases in Part VI, Ss. 122-135, both inclusive. This portion of the Act opens with the general principle that:—

> "The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State." (122).

In exercising the executive authority to enforce the laws of the Federal Legislature, regard must, of course, be had, as a sort of reciprocity, to the interests of the local unit concerned. But, so far as the Provinces are concerned, the Governor-General is empowered to *direct* any Governor to act as his agent in regard to tribal areas, or in regard to the reserved departments of the Central Government, *viz.*:— Defence, External Relations, and Ecclesiastical affairs. (S. 123).

Even the executive authority of the Federation may be delegated by the Governor-General in any matter in which the Government of the Province concerned consents to be entrusted with such powers, either conditionally or unconditionally. [124 (1)].

The Federal Legislature may, likewise, impose duties or confer powers upon a Provincial Government, its officers or authorities, even on subjects on which it is not competent to a Provincial Legislature to make laws.

It is in such matters that difficulties would, in practice, most frequently arise. For the law to be

enforced would be Federal. It would, therefore be possible,—and, indeed, necessary,—for the Federal authorities concerned to issue explanations, or instructions for the enforcement of the law. The actual working of each such law, however, must be of necessity within the jurisdiction of the Provincial Government. The officers of the latter may be entrusted with the necessary powers to carry out the law; and the Central Government would, naturally, pay such officers while engaged in enforcing the Federal laws [124 (4)]. But this by itself does not avoid all the possible difficulties and contretemps. The moment a case occurs, in which a Provincial Government may be interested on the opposite side, as it were, to that in which the Federal Government are interested, the Provincial officers might find it extremely difficult to reconcile their provincial sentiment with their duty to the Federal authority paying for their services.

The Governor-General would, ordinarily, satisfy himself in such matters by means of inspection through his own nominees; and these may constitute a Federal Inspectorate, even if the actual administration of Federal Laws is entrusted to the local officers. The supremacy of the Federal Executive is expressly provided for in Section 126, which enjoins upon every Province so to exercise its own executive authority as not to impede or prejudice the exercise of the executive authority of the Federation. The latter is even empowered to issue such **directions** to a Province, in this behalf, as may appear necessary to the Federal Government. And this right to issue directions to a Provincial Government is not confined to the Federal subjects proper, but may even extend to giving direc-

tions for carrying into execution in that Province of any Act of the Federal Legislature relating to a matter included in the Concurrent List. So far, for instance, as the means of communications are concerned, the Executive authority of the Federation can give directions to any province as regards the construction and maintenance of such means of communications,—quite apart from the means of communications coming directly under the Federal authority as part of the Federal functions in connection with the national defence.

Should any province fail to give effect to such **instructions or directions**, the Governor-General is empowered,—acting in this discretion,—to issue the same directions,—or somewhat modified, as **orders** to the Governor (126(4)). Such *Orders* may even be issued regarding the manner in which the provincial executive authority is to be exercised "for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof." This may very easily bring to heel a Provincial Government pursuing, let us say, a policy of active sympathy with the Nationalist (or Socialist) agitation; or another believed, at the headquarters, to have leanings in favour of one community to the prejudice of the other. In no Province could such contingency really arise, so long as the Governor sticks to the letter of the powers and authority given him by law. But even if the Governor happens to have leanings on the Nationalist (or Socialist) side, the supreme Government have reserved to themselves sufficient authority to compel such satraps to obey orders.

Broadcasting

There are two subjects,—one relatively modern, the other of time immemorial importance in Indian national economy,—in which it is likely that there may be friction between the Federal and Local authorities. As regards Broadcasting, Provinces are entitled to be entrusted with functions, which would enable them to make or use transmitters in the Province, and to impose fees on the construction or use of Transmitters, or the use of receiving apparatus.* The Federal Government may, indeed, have their own such instruments of either sort; and over those no Province or State would be allowed any authority. Even as regards instruments and apparatus which are within the jurisdiction of the Province, the Federal Government are entitled to impose conditions for the exercise of such functions entrusted to the Provinces, including the finances of such services. But the Federal Government are not entitled to impose such conditions, which would regulate the matter broadcast from the Provincial instruments, [129 (2)], except, of course, in the broad case of a contingency in which the Governor-General considers the peace and tranquillity of India or any part thereof endangered.

Water Supply

As regards Water supply, especially in these days of extensive Irrigation works upon large rivers flowing through more than one Province or State, the chances of a conflict between the units concerned are very real indeed. It is possible for a State or a Province, in which a River rises, to obstruct or divert its flow,

*cp. Section 129

or to withdraw water from it, to such an extent that, in the lower reaches of the same stream, flowing through another Province or State, there may not be sufficient water supply for the irrigation of the lands of that province. The latter's whole economy may be thrown out of gear because of such disturbance of its water-supply. Sections 130-134 accordingly provide for proper investigation by a competent Commission of any complaint made by a Province or a State to the Governor-General. The recommendations of the Commissions would, when turned into the form of decision or order by the Governor-General, have all the force of a legal decision, and would be enforced as such.* Room for appeal to His Majesty in Council is reserved expressly to the State or Province which feels itself aggrieved by such a decision; but the decision of the King in Council will be final, and will override,—as also the decision of the Governor-General, unappealed against,—all local legislation or executive action inconsistent with such decision.

Section 135 provides for an Interprovincial Council, appointed on the recommendation of the Governor-General, to enquire into any dispute between Provinces, as also to investigate and discuss subjects of common interest to more than one unit in the Federation, and make recommendations for a co-ordinated policy. This is a clumsy, expensive, but necessary means of securing internal co-operation between the several units of the Federation.

Given these occasions for possible conflict or divergence of interests; and having regard to the

*cp. Section 131.

solutions provided in the Constitution, there is good ground for the view that in all essential respects the Governor-General, as agent or representative of British Imperialism, will remain the *supreme* dominating force over the Provinces as well as the States, over the excluded areas as well as the entire Federation.

CHAPTER III.

THE PROVINCIAL EXECUTIVE

The Governor.

The Provincial Governor is appointed, under Section 48* of the Act of 1935, by a Commission from His Majesty under the Royal Sign Manual.

*Section 48(1): "The Governor of a Province is appointed by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Schedule III to the Act provides the following scales of salaries to the Governor-General and the Governors of Provinces.

The Governor-General		...	... Rs.	250,000	annually
,, Governor of Madras		...	... ,,	120,000	,,
,, ,,	,, Bombay	...	... ,,	,,	,,
,, ,,	,, Bengal	...	... ,,	,,	,,
,, ,,	,, United Provinces		... ,,	,,	,,
,, ,,	,, Punjab	...	... ,,	100,000	,,
,, ,,	,, Bihar	...	... ,,	,,	,,
,, ,,	,, The Central Provinces & Berar			72,000	,,
,, ,,	,, Assam	...	... ,,	66,000	,,
,, ,,	,, N. W. F. Province		... ,,	,,	,,
,, ,,	,, Orissa	...	... ,,	,,	,,
,, ,,	,, Sind	...	... ,,	,,	,,

By clause 2 of the Schedule, Travelling Expenses and Equipment Allowances to these officers are authorised to be fixed from time to time by Orders in Council of His Majesty. Further, "such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council." There is, in this, no hint of any variation in these allowances "from time to time",—and certainly no suggestion that they may be in some reasonable ratio to the per capita income of the people.

Clause 3 provides for leave allowance,—to be fixed by order in Council to these officers; and clause 4 allows them Customs exemption according to Orders in Council. Clause 5 provides for salary, &c. on the same scale to the acting Governor-General and Governor as to the substantive corresponding officer; and clause 6 makes all these sums payable out of, and charged upon,—i.e., non-votable by the Legislature—the revenues of the Federation in the case of the Governor-General, and of the Province in the case of the Governor.

The Third Schedule to the Act provides for certain allowances by way of travelling and equipment expenses, which are fixed from time to time by Orders in Council by His Majesty, and which range from £3,000|- to the Governor-General, downwards as shown in the Table annexed. They are, under the Act of 1935, left to be determined from time to time by Orders in Council of His Majesty.*

*Cp. Sections 78-79 of the Act of 1935.

Note on the Allowances payable to the Pro

According to an Order in Council laid before Parliament at its for the Allowances payable to the Governors of Indian Provinces to and dignity.

Annual Allowance	Madras	Bombay	Bengal	United Provinces	Punjab
1. Renewal of Furniture official residences	14,000	23,000	20,500	4,000	3,000
2. Sumptuary Allowance.	18,000	25,000	25,000	15,000	12,000
3. Military Secretary & his Establishment	112,000	136,000	121,000	116,000	88,000
4 & 5. Band, Body-guard	169,000	123,400	150,000	...	...
6. Surgeon & Establihment.	36,000	33,000	34,800	...	...
7. Tour Expenses	113,000	65,000	122,000	125,000	60,000
8. Miscellaneous including maintenance of Cars	92,000	108,000	100,000	23,000	21,700
9. Maintenance of furniture in official residences.	21,500	25,000	34,000	14,500	10,500
Total of first 9 items.	575,500	538,400	607,300	297,000	141,200
10. Equipment and Travelling Charges when appointed from Europe	£2,000	£2,000	£2,000	£1,800	£1,500

Leave Allowance Rs. 4,000 per month for the first 6; 3,000 and Exchange at the rate ruling on the day. Maximum for Special

vincial Governors under an Order in Council
opening in November 1936, the following scales have been prescribed
enable them to discharge the duties of their office with convenience

Bihar	C. P. & Berar	Assam	N. W. F. P.	Sind	Orissa	Remarks
Rs. 4,500	2,900	1,000	1,750	1,000	2,500	Maximum allowed
6,000	6,000	6,000	6,000	8,000	6,000	Maximum allowed
75,000	61,000	63,000	68,000	59,000	40,000	Annual
...	...	...	...	...	...	Allowed only to the first Provinces
...	...	...	...	...	...	
60,000	27,000	55,000	18,000	30,000	35,000	
21,700	16,600	14,100	14,100	17,800	11,500	Annual
13,000	9,800	4,000	5,000	4,000	8,000	
108,000	107,300	142,100	112,850	129,800	103,000	
£1,500	£1,200	£1,200	£1,200	£1,200	£ 1,200	Payable only if resident in Europe at time of appointment

Rs. 2,750 p. m. to the rest . No allowance for leave to Acting Governor
reasons could be Rs. 5,500 p. m. by Secretary of State.

Recruitment for Governorships

The Governors of Provinces are generally appointed for a period of 5 years. Since 1925, they have been allowed to take leave during that term for an aggregate period of four months. It seems to be a convention of the British Constitution that, whereas the Governor-General is appointed by the King on the advice of the Prime Minister, the Governors of the Presidencies are appointed by the King on the advice of the Secretary of State for India. The latter cannot, constitutionally, advise the King to appoint himself; *i.e.*, the Secretary of State, to any posts to which he advises appointment. Nor, it seems, can the Prime Minister give his own name for appointment as the Governor-General. If he does, as Ramsay MacDonald was reported in 1930 to have done before Lord Willingdon was finally appointed to the post, the King is entitled to demand one or two names at the same time, to enable him to make a fit and proper choice.

Governors of Indian Provinces are appointed from mainly two classes: (A) British public men, or (B) Indian Civil Servants.

(A) The former comprise (i) ornamental or impecunious members of the British aristocracy; (ii) useful parliamentarians, who may have outlived their season of direct usefulness to their Party; (iii) or distinguished Civil or Military Servants of the Crown.

(i) They are generally appointed only to the Presidency Governorships, which have always enjoyed a certain degree of titular eminence. These are not people distinguished particularly for their intellectual eminence, administrative acumen, or political sagacity,

—especially if they happen to belong to British aristocracy.

(ii) Even when they are selected from among Parliamentarians, they may be noted more for a dogged sense of Party Loyalty, than for any brilliance, insight, or sympathy. But they are supposed, by tacit convention, to be more adaptable to the changing forms of a growing constitution; more amenable to democratic ways and usages; and, therefore, more suitable, in these important posts, than any selections from the experienced administrators in India.

(iii) Distinguished public servants of the Crown in Great Britain have not even these claims for such appointments. They are, frankly, in the nature of personal or political rewards to their friends or followers by British politicians, which, however, do not always prove failures in these exalted posts.

Governors from Royal Family or Indian Princes

In this connection two side issues might be mentioned in passing. There have been suggestions in the past for appointing Provincial Governors from (a) the British Royal Family, or (b) from the Indian Princely Houses. For the former, there is the precedent of the Duke of Connaught appointed Governor-General of Canada, or of the Earl of Athlone that of South Africa. For the latter the glowing traditions of the greatest of the Mughals have even now a fascination for the sophisticated imagination, which might call forth a spurt of enthusiasm for any such experiment. On every ground of political propriety or constitutional wisdom, it would be inadvisable to introduce

such elements into the day-to-day working of the new constitutional machinery. For these classes are,—generally speaking,—imbued with sentiments and living in an environment, in which the realities of life or popular thought have little bearing. Their vision is thus bound to be narrow, their judgment warped, their ideals of life obsolete, if not reactionary. Hence, at a time when it is claimed India is entering upon a new constitutional experiment, such elements would be the least suitable, being calculated to complicate unnecessarily the new machinery.

Civilians as Governors

(B) As for the second class of people from among whom Governors of Indian Provinces are chosen, ever since the first new province of Agra was formed in 1834, the convention has been laid that the chief of such provincial administrations shall be selected from among distinguished Civil Servants of the Crown in India. These are usually experienced administrators, having grown grey in the country's organised service. But this very experience, this very knowledge of the country,—or what passes for such knowledge in those classes,—is apt to prove a hindrance. The traditions of the Indian Civil Service require that an officer in that select body of men should not be restricted either to one province, or to one department of the Public Service,—unless he is an utter dunce. The constant changes from post to post, from province to centre and *vice versa*, make it impossible for him to acquire a thorough knowledge of any department, or of any province,—especially when an individual is not a native of that region, and has no direct personal know-

ledge of his own regarding the ways and means of the peoples, their customs and manners, their ideals and ambitions. In these days of rapid communication, the central authority necessarily maintains a domination over the local administrator, which as necessarily leaves no room for the development of initiative, or a sense of personal responsibility, among the officials actually engaged in routine administration. Hence, the feeling is steadily growing that the Indian Civil Servant,—particularly the European specimen,—is becoming more and more a descendant and emulator of the immortal Joe Sedley rather than of the Metcalfes and the Cottons, the Lawrences and the Birds, who are believed to have known and loved and ruled India for her own good, a hundred odd years ago. From them to expect any special qualification, aptitude, or sympathy, fitting the holder of such attributes to be a Governor of a modern Province, is a hope or belief more and more doomed to disappointment by the logic of events. These Public Servants, in the course of their service, inevitably come to contract prejudices and sympathies, which would not permit them to claim the one quality of absolute impartiality that was in the last century claimed to be their distinguishing feature. To-day their own interests,—as an economic group,—are so identified with the governing and exploiting class in general, that the Indian people do not find the supposed knowledge of the country, or experience in administering its affairs, to be of any real advantage to them. Besides, the public servant, especially of the higher class, is increasingly becoming the representative of a class, in permanet antagonism to the other class; and, as such, his

claim to general sympathy with the governed, or personal impartiality, becomes unavoidably mythical.

Indianisation of Governors

These remarks apply as much to the Indian born as to the European born Civil Servants in India, who provide the recruiting ground for appointment to Governorships in Indian Provinces. The Indian becomes just as much class-conscious, and is as jealous of his salary and allowances,—however unconscionably high they may be,—as any European. And he has not the European's excuse to be indifferent to the level of national prosperity in general, which an outsider may well profess. Even the communal bias is not always utterly absent from an Indian Civil Servant arriving at an eminence at which his prospects of promotion to a Governorship may be calculable. The general argument in favour of Indianisation of the Public Services in the country apply as much in this case as in that of any other appointments hitherto held by Europeans. But the experience of such Indians as have been substantive or acting Governors in Indian Provinces is not such an unqualified success as to make an irresistible impulse for its repetition. True, most of such cases relate, not to the experienced public servants of the Crown, regularly passed through the routine of the Service ranks, like a Lawrence, a Strachey or a Hailey. They have been rather men of political eminence, or professional distinction, in the public life of the country, who, by exigencies of Imperial diplomacy, had to be appointed to such posts. And if, after such record, and in such posts, they exhibited weakness, lack of familiarity with the

duties and privileges of the post, or indifference to its opportunities, it would not be quite fair to use their example for condemning or excluding the Indian born public servant from such posts. But, until the Governor of a Province becomes directly responsible for the administration of his charge to the peoples of the Province, or evolves into a mere figurehead, it would be impolitic absolutely to generalise that Indians alone should be selected for such posts.

Personality of the Governor

The bureaucratic machine in India being carefully organised and minutely regulated by innumerable codes, regulations, or conventions, the individuality of the Governor does not count for very much in the actual working of the provincial administration. Even from the point of view of initiative in matters of broad policy, the individual Governor would have very little scope. Until the Act of 1935, the final responsibility for the Government of India rested with the British Parliament, in relation to which the Indian Governors were no more than servants of the Crown. The Secretary of State's powers of superintendence, direction, and control were all-embracing; and, in the last resource, even the Governor-General had to obey orders, or vacate his post. There have been cases of clash of personalities or conflict of ideals in the past; but the example of a Northbrook or Curzon, of a Buckingham or a Fuller, were sufficiently clear to prevent any such conflicts happening since.

But, in the theory of the Act of 1935, the responsibility of Parliament is considerably relaxed, so far as the government of the Provinces is concerned. Say

the authors of the Report of the Joint Select Committee of Parliament:—

> "The scheme of Provincial autonomy, as we understand it, is one whereby each of the Governor's Provinces will possess an Executive and a Legislature **having exclusive authority within the Province, in a precisely defined sphere,** and, in that exclusively provincial sphere, broadly free from control by the Central Government and Legislature."*

Powers of Control &c. in the Secretary of State

There is, indeed much in the Act of 1935, which embodies the essence of Sections 2, 33, and 45 of the Act of 1919, vesting the fullest powers of superintending, directing and controlling the government of India all over the country in the Secretary of State, and, under him, in the Governor-General-in-Council.† But those provisions restrict the theoretic transfer of responsibility for the provincial administration from the British Parliament to the Provincial Legislatures only obliquely. We shall notice the substance of these indirect means of reservation or restriction of provincial autonomy in their place. Here it is enough to

*Para 48, op. cit.

†cp. Section 14 of the Act of 1935; also Chapter IX of the "**Federal Structure.**"

"Section 54: (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him by the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this Section.

(2) Before giving any directions under this Section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty."

add that the Governors of the Presidencies, as well as of all other Governors' Provinces, are henceforth supposed to preside over a locally autonomous unit, with the actual Ministries responsible, within a prescribed ambit, to their own constituencies in the Provincial Parliament. Accordingly, it is thought in some quarters that all Governors should be appointed from among British public men or distinguished servants of the Crown, as, presumably, these would be more familiar with the workings of a responsible government than those moulded in the traditions of the non-responsible Bureaucracy which has prevailed in India hitherto. So long as the British connection and domination is kept intact,—as is but too clearly the case in the Act of 1935,—it is a matter of little importance to the Indian people whether these chosen to preside over Provincial administrations are sent out from Britain, or are promoted from their place in the routine administration of the country. They may be all presumed to be equally hostile to Indian Nationalist ambitions. The Governor's personal responsibility remains practically unaffected to the Governor-General and to the Secretary of State,—and, through these, to the British Parliament in the ultimate analysis. Hence it is relatively a matter of no importance to choose between public servants of the Crown in India and those from Britain.

Dominion Analogy

For the Governor to be made personally responsible for the administration of the Province to the chosen representatives of the Province involves a radical change in the very basis of the Act of 1935,

which those who have the right and the power to ordain such changes will not be willing to effect. There are, indeed, ways and means by which the appointment of Provincial Governors could be brought within the range of popular and local responsibility. If the example of the Australian Commonwealth is followed, and the person to be appointed is allowed to be designated by the Provincial Legislature or by the responsible Provincial Government; the prospects of a gubernatorial responsibility to the Provincial Legislature would be considerably improved. In the Act of 1935, there is not a trace of evidence to support the view that Indian Provincial Governors are intended or could be made to follow the Dominions analogy, in their appointment or in their constitutional behaviour.

But even if there was the slightest ground to suppose that the British Government and Parliament would countenance such a radical departure from the entire basis for the present Constitution, there are reasons which may not make the course unexceptionally desirable for India. The working of Parliamentary Democracy,—if that is the goal towards which the constitutional evolution of India is tending,—requires that the head of the executive should be free from any suspicion of party bias. The Governor, as conceived and designed in the Act of 1935, is, indeed, not a mere constitutional figurehead. He is given definite powers and special responsibilities, which will keep his role far more active than that of the British King; and to bring him within range of political partisanship, which cannot but make the present method of appointment occasionally unwelcome to the peoples

of the Province. Nevertheless, to turn the Provincial Governors frankly into Party chiefs or nominees,—as American States' Governors are,—would presuppose a scheme of constitutional government wholly different from the lines on which India has been allowed to progress hitherto. A revolutionary change in all our conceptions of the constitutional practice as applied to governors may, in course of time, dispense altogether with such a fifth wheel to the coach of administration. But so long as the constitutional progress of India follows the evolutionary trend, it would be inadvisable to convert the Governorship into an elective office, directly responsible to the electors.

Traditions, Psychology, and Environment of Governors

In actual practice, besides the definite powers, functions and responsibilities entrusted by law to the Governors, much will depend upon the personality of the Governor, the traditions of his office, and the environment surrounding him. The Governor's personality must needs vary with each individual officer; and so no general remark can be made in that connection. All that we can say, in this regard, is: that the influence of the personal character, likes or dislikes of the Governor will extend at most of his immediate entourage; and that it is, even so, very closely restricted by the Act, as well as by the rules and conventions governing the Governor's dealings with his official collaborators and subordinates.

His personal influence upon the general life of the province will be an unknown quantity, which would, however, be generally exaggerated by the common human weakness in such matters. If Governors of

Indian provinces learn, in the future, to resist the temptation of lending their names to any fad of the moment,—however laudable it may seem on the surface; and of giving a permanent, abiding shape to all their own ideals in government, they would confer a benefit proportionate to the eminence they enjoy in the scheme of Indian administration.

Traditions of the Governor's Office

The traditions of the Governor's office, have hitherto made him a social as well as a political chief of the Province, its representative and spokesman in all official matters. The social leadership of the Governor may remain so long as we maintain a stratified society, and continue its system of undisguised snobbery. It is to be hoped, however, that the realisation, in a daily increasing volume, of the true task of government in a country like India, will diminish the importance of the so-called "Society" or social functions; and make the Governor more and more busy with the execution of the laws embodying the policies that his government have sponsored.

Imitation of Britain

The imitation or reproduction of English ideals or methods in India, which comes naturally to Britishers familiar with their own problems,—whether they have been directly sent down by the British Government to administer Indian Provinces, or have been promoted from the Indian Services to the post,—must also be discontinued, if the actual government of the land is to be in harmony with the desire of the people and the conditions of their environment. The practice, likewise, of what Curzon once called "Departmental-

ism", must also be modified, if a degree of elasticity is to be imparted to this Constitution, which, by its actual wording, tends to be excessively rigid. The government of a living and growing people can never be achieved satisfactorily by a rigid constitution. Hence, pending its radical modification, the responsibility would lie heavy on those who have the duty to administer it, and who call upon the people to aid in working it, even though it is admittedly defective and generally unacceptable, to impart as much elasticity as is possible within the letter or the spirit of the Constitution, and the traditions of constitutionalism. The Bureaucratic mind has long since been acknowledged to be rigid, formal, inaccessible to new ideas, delighting in routine, and preferring the beaten track. That, if continued under the new regime, would spell the death beyond redemption of the slightest hope that any reasonable person might entertain of making anything at all acceptable out of this Constitution.

Environment of the Governor

The environment of the Governor, consisting, as it has hitherto done, of sundried bureaucrats in the shape of Secretaries and Councillors, will now be modified,--only in so far as Ministers responsible to popular opinion, as reflected in the Legislature, will form the chief advisers of the Governor. The Councillors will disappear; and with them will vanish the most important of the bureaucratic element in the Governor's immediate entourage. The Private Secretary will, of course, still continue to be derived mainly from the Civil Service; but he will not have the same opportunities for infusing the bureaucratic spirit,

even in the Presidency Governor's outlook, as he had when the Executive Councillors represented the most experienced (?) and the most rigid elements of the Civil Service. Even the Departmental Secretaries, though continuing to be in the main Civilians, will not have the same opportunities of access to the Governor,—except in regard to those items which are matters of his "Special Responsibilities"; or those in which by law he is required to exercise "his individual judgment."* In these ways the preponderant influence of the exclusively bureaucratic elements will diminish,—though it cannot altogether disappear in the scheme of Constitution as at present devised. Even when the Indian element comes to replace the present preponderant British element in the superior ranks of the Civil Service, the traditions of the bureaucrat will die a hard death. Hence the Governor's environment will continue to reflect the views and outlook of the permanent Public Servants,—in other words, of the Bureaucracy,—for a long while to come.

Position of the Indian Element around the Governor

The Indian,—and particularly, the popular,—element surrounding a Provincial Governor will, in the initial years at least, suffer from several handicaps. They will be aware of their own ignorance of the mysteries of administration, and so will labour under an Inferiority Complex, which they will be unable to rid themselves of for years to come. The Governor, it is true, is required, by his Instrument of Instructions.† so to conduct the work of his Government, as to pro-

*Cp. Section 59 (4) p. 79.

†Cp. Section 53 of the Act of 1935 and Appendix to this Chapter.

mote a sense of parliamentary as well as collective responsibility. But while his new Ministers lack knowledge of the working of the administrative machine, or even of general policy, he, the Governor, will have marvellous opportunities to be a *de facto* as well as *de jure* head of the executive Government of his Province, unless, indeed, he too is unfamiliar with the traditions of Government in India.

Besides lack of experience and knowledge, the Indians surrounding the Governor,—or ordinarily coming into contact with him,—are likely to be imbued with a degree of snobbishness, which will make them imitate slavishly where they are naturally afraid to originate boldly. Their education and general upbringing is such that things British or European have a clear preponderance in their scale of values. This may prove detrimental to the growth of native talent or capacity.

There is much, therefore, in the environment of the Governor,—Indian or British,—which will maintain, for years to come, standards of administration, canons of public propriety, forms and methods of constitutional procedure, or rules of social intercourse, which must inevitably give heavy odds in favour of the present system being maintained in all its essentials.

The Scope and Nature of Executive Authority

The Provincial Executive is divided into two main parts: the Governor, and his Council of Ministers. There may be such officials, as, like the Advocate General, may be specially appointed by the Go-

vernor to advise the Government.* But there are, in the Provinces, no officers comparable to the Financial Adviser or other Counsellors of the Governor-General;† and there are no Reserved Departments, such as Defence, Foreign Affairs &c., as in the Federal Government. Section 49 defines the scope of the Provincial Executive as follows:—

"(1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this Section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any Court, Judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws."

The distinctive feature of the Act of 1919,—Dyarchy,—has been abolished, but the generally sweeping

*55.—(1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of a High Court, to be Advocate General for the Province.

(2) It shall be the duty of the Advocate General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

†Cp. Sections 11 and 15 of the Act of 1935.

wording of this Section does not automatically abrogate existing Indian laws, which confer specific powers or functions upon specified authorities. At the same time, it is made possible for the Federal or the Provincial Legislature to enact laws which may confer such functions upon subordinate authorities, for the sake probably of covenience in administration.

The executive authority is to be exercised by the Governor in the name of the King-Emperor, either directly, or through officers subordinate to him.* This authority is to be exercised, according to the next following section, by the Governor on the advice of his Council of Ministers,—who are to have a collective responsibility in such matters,—except in cases

*59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

where he has to act "in his discretion," or exercise "his individual judgment." Says Section 50:—

"(1) There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the Council of Ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have exercised his individual judgment."

The difference between a Governor "acting in his discretion" and "exercising his individual judgment" lies in this: that while in the former case the Governor need not consult at all his Ministers, in the latter he may consult them, but is not bound by their advice. In both cases the Ministers' opinion is ineffective, either because it is not invited at all, or because, though invited, is expressly made not binding upon the Governor. There can be, moreover, no question as to whether a matter was within the Gov-

ernor's sole discretion, or was one in which he could exercise his individual judgment, *i.e.* consult his Ministers, but not necessarily follow their advice; for the mere decision or declaration by the Governor, *in his discretion*, *i.e.* without consulting his Ministers at all, that it was a matter exactly of the kind that he had treated it to be, would be final under the Section.*

Kinds of Executive Action

There are thus three distinct grades, or kinds, of the executive action of the Provincial Governor:—

(1) Governor acting on the advice of His Ministers;

(2) Governor acting *in his individual judgment*, in which he may have consulted the Ministers, but if he cannot view the matter as his Ministers view it, he

*Cp. Section 50 (3).

Says the Report of the Joint Select Committee of Parliament, considering the Act of 1935 when it was still a Bill before Parliament: "We agree that it is desirable that the Governor's special responsibilities, **over and above the matters which are committed to his sole discretion,** (Black ours) should be laid down in the Act itself, rather than that they should be left to be enumerated hereafter in the Instrument of Instructions . . . . **(para 74).**

We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of the Ministers. In no sense does it define the sphere from which the action of Ministers is excluded. **In our view, it does no more than indicate the sphere of actions in which it would be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it,** if in his own unfettered judgment, he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which the Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration the list of special responsibilities themselves, and the manner in which they are defined; but if we have rightly appreciated their place in the Constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that the general scope and purpose should be set out with sufficient precision. Para 75 **Op. Cit.**

can act on his own opinion, if necessary in opposition to the opinion of his Ministers;

and (3) Governor acting *in his sole discretion*, *i.e.*, matters in which he need not consult his Ministers at all.*

Limits of Executive Authority

Let us proceed next to consider what are the limits of these three divisions of the executive functions of the provincial Governments.

Numerically, perhaps, the widest section will be of those functions of government, in which the Governor must act on the advice of his Ministers. But these matters will, essentially speaking, be of routine character in the administrative mechanism; and will have little scope for any initiative, or change in fundamental policy. The real scope for the Ministers will be in those matters in which the Provincial Legislature is entitled to legislate, either exclusively, or concurrently with the Federal Legislature. Executive action will needs follow legislation, to enforce the legislation. But even here there are safeguards in the shape of subordination of the Governor to the Governor-General;† and in the right of the Governor to grant or withhold sanction to the introduction or

*There is, apparently, under Section 59, a fourth class of actions, in which the Governor is to act in his discretion **after consultation with his Ministers**. These functions relate to the making of rules by the Governor for the division of work among his Ministers, for the authentication of orders and other instruments of Government, and for the supply of information to the Governor, especially on any question of provincial administration which may involve his special responsibility. Similarly, in making rules to regulate procedure in the Legislature, in certain matters, the Governor must consult the President of the Chamber affected, cp. Section 84, (1) proviso.

†Compare Sec. 54 above. See **post** Chapter VI.

discussion of certain classes of Bills in the Legislature, to recommend other Bills, to make Ordinances and promulgate Acts;* or in the shape of his veto over a Bill passed by a Provincial Legislature, as also in his power to reserve a Bill for the signifying of His Majesty's pleasure thereon. We shall discuss these safeguards, reservations or restrictions more fully when we come to deal with the Provincial Legislatures. Here we may repeat that however extensive in appearance the field assigned to the Constitutional advisers of the Governor, it is rigidly enclosed in a barbed wire fence, and contains very little grounds for any fruitful experiment for the political advance or economic emancipation of the Indian people.

*88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance if a Bill containing the same provisions would under this Act have required the Governor General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;

(b) shall be subject to the provisions of this Act relating to the powers of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(Continued on page 84

Discretionary Powers and Functions of the Governor.

Mainly because the Constitution contained in the Act of 1935 is an experiment and an instalment, the executive authority of the Governor is buttressed by: (a) certain powers and functions to be exercised on his sole discretion, *i.e.* without any consultation with

(*Continued from page 83*)

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void

89.—(1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

Provided that if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

his Ministers; (b) certain other powers and functions, which he is to exercise in his individual judgment, *i.e.*, those in which he may consult his Ministers, but is not bound by their advice; *e.g.* certain specified "special responsibilities", in the discharge of which he may consult his Ministers, but is, if he things it necessary to do so, entitled to overrule their advice; (c) certain concurrent powers of legislation,* apart from the rights to grant his previous consent to the introduction of certain Bills in the Legislature, or to recommend certain other Bills, to withhold his assent to a Bill passed by the Legislature, to reserve it for consideration by the Governor-General, or for consideration by His Majesty; and (d) certain overriding powers including the suspension of the entire Constitution in the Province.

*Cp. Section 90 of the Act

90.—(1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either (a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or (b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void: Provided that, for the purposes of

(*Continued on page 86*)

By Section 54 of the Act of the 1935, the Governor is placed under the general control of the Governor-General in all matters in which he is required to act in his discretion, or in his individual judgment.*

Section 53 lays down the procedure for the issue of these Instruments of Instructions to the Provincial Governors.† The general nature of the Instrument of Instructions to the Provincial Governor may best be gauged from the following observations of the Report of the Joint Select Committee of Parliament on the Government of India Bill, 1935: (Para 73.)

> "The Instrument of Instructions might direct the Governor to be guided generally by the advice which he receives from his Ministers, but reserve to himself a very wide discretion to act upon his own responsibility when the circumstances seemed so to require........ Or the Instrument might specify certain particular matters with regard to which the Governor might exercise his discretion. whatever the advice of his Ministers might be."

As regards the matters which by the Act are left to the sole discretion of the Governor, the fol-

(*Continued from page 85*)

the provisions of this Act relating to the effect of an Act of the Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion; but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

*Cp. ante P. 71.

†The text of an Instrument of Instructions to a Provincial Governor is given in the Appendix to this Chapter.

lowing list, compiled from the various sections of the Act, is, if not exhaustive, sufficiently illustrative to indicate **the scope and nature of the absolute discretionary powers given to the Governor.**

The Governor is authorised **to act in his discretion** in the following cases:

(1) Under Section 50: he may preside at meetings of the Council of his Ministers;

(2) Decide any question whether any matter is, or is not, one in which the Governor is required to act in his discretion, or to exercise his individual judgment.

(3) Under Section 51 (5): choose, summon, or dismiss his Ministers, and determine their salaries, until the same are fixed by an Act of the local legislature.

(4) In order to combat crimes of violence committed with a view to overthrow the Government as by law established, the Governor may direct that some of his specified functions shall be exercised by him in his discretion. During the currency of such directions, he may authorise any official to speak and take part in the proceedings of the Legislature, or the joint sitting of the Chambers, as the case may be.

(5) Under Section 58: to make rules for securing that no records or information relating to the sources from which information has been or may be obtained, with regard to the operations of persons committing or conspiring to commit crimes of violence intended to overthrow the Government as by law established, shall be disclosed by any member of any Police Force in presence of another member of that force except under directions of the Inspector General or Commissioner of Police; or to any other person (including, pre-

sumably, the Minister in charge of the Police), except in accordance with the directions of the Governor.

(6) Under Section 59: to make rules: (a) for the authentication of the Orders and other instruments of Governments; (b) for the more convenient transaction of the business of the Provincial Government; (c) for the distribution of the work amongst the Ministers, except such business as is entrusted to the Governor to be transacted in his discretion; (d) to include provisions in these rules requiring Ministers and Secretaries to Government to transmit to the Governor all information regarding the Provincial Government as may be mentioned in the rules, or as the Governor may otherwise require to be transmitted to him; and, in particular, requiring the Minister to bring to the notice of the Governor, and the appropriate Secretary to bring to the notice of the Minister concerned and of the Governor, any matter under consideration by him which involves or appears to him likely to involve any special responsibility of the Governor.

(7) Under Section 62: To summon or prorogue the Legislature, or to dissolve the Legislative Assembly;

(8) Under Section 63: To address the Legislative Assembly or either Chamber thereof in a Bicameral Legislature, and to require the attendance of the members.

(9) To send messages to the Chamber or Chambers of the Provincial Legislature in regard to a Bill pending before that body or for any other purpose.

(10) Under Section 69: To remove certain disqualifications for a person to be a member of the Provincial Legislative Assembly or Council.

(11) Under Section 74: To summon the two Chambers of a Bicameral Legislature to a joint sitting for the purpose of deliberating and voting on a Bill which it appears to the Governor relates to Finance, or affects the discharge of any of his special responsibilities, even though twelve months have not passed before the Bill was passed by the Legislative Assembly, but not presented to the Governor for his assent.

(12) Under Section 75: To assent to any Bill passed by the Provincial Legislature and presented to him for the purpose, or to withhold assent thereto, or to reserve the Bill for consideration by the Governor-General; or to return the Bill together with a message requesting that the Legislature will reconsider the Bill, or any specified portion thereof, and also to consider the desirability of introducing any such amendments as the Governor may *recommend* in his message.

(13) Under Section 78: To decide any dispute whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Provinces, which is not subject to the vote of the Provincial Legislature.

(14) Under Section 84: To make rules, after consultation with the Speaker, or the President, for regulating the procedure of and the conduct of business in the Legislature.

(a) as regards any matter which affects the discharge of any functions of the Governor to be exercised in his discretion, or in his individual judgment;

(b) to complete in time the financial business of the Legislature;

(c) to prohibit the discussion or the asking of any questions on any matter connected with an Indian State, unless the Governor is satisfied that the

matter affects the interests of the Provincial Government, or of a British subject ordinarily resident in the province, and so consents to the matter being discussed, or the question being asked;

(d) to prohibit the discussion of or asking questions on any matter connected with the relations between His Majesty, or the Governor-General and any foreign State or Prince, unless the Governor in his discretion consents to such discussion.

(e) or the discussion, except as regards estimates of expenditure, of any matter connected with the tribal areas, or arising out of or affecting the administration of an excluded area, or asking questions on the same;

(f) or the discussion of the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; or asking questions on the same.

It must be noted that if a rule made by the Governor in these behalf is inconsistent with any rule by the Chamber, the Governor's rule prevails;

(g) to make rules for the procedure to be followed at joint meetings of the two Chambers in relation to the preceding purposes.

(15) Under Section 86: To direct that no further proceedings should be taken with reference to a Bill, Clause, or Amendment, in relation to which the Governor-General certifies that the discussion of the Bill introduced or proposed to be introduced in the Provincial Legislature, or of any Clause or Amendment thereof, would affect the discharge of his special responsibility in regard to the prevention of any grave menace to the peace

or tranquillity of the Province or any part thereof.

(16) Under Section 89: To promulgate Ordinances when he is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions entrusted to his sole discretion or regarding which he has to exercise his individual judgment.*

(17) Under Section 90: To enact Governor's Acts, or to suggest a Draft for the Governor's Act to be passed by the Legislature, if at any time it appears to him that for the purpose of enabling him satisfactorily to discharge the functions entrusted to his sole discretion, or on which he has to exercise his individual judgment, provision should be made by legislation.

(18) Under Section 92: To make regulations for the peace and good government of an excluded or partially excluded area in a Province.

(19) Under Section 93: To make a Proclamation, when the situation so requires, that his functions as Governor will be exercised by him in his discretion to such extent as is specified in the Proclamation. Such a Proclamation may contain all incidental or consequential provisions, which appear to the Governor to be necessary or desirable to give effect to the objects of the Proclamation; and such provisions may suspend wholly or partially the operation of any provisions of this Act relating to a Provincial body or authority, except the functions of a High Court.

*This is apparently different from the power under section 88 to promulgate ordinances when the Legislature is not in session; whereas section 89 seems to apply whether or not the Legislature is in session. Ordinances under section 88 may accordingly be such as are advised by the Ministers. Again Ordinances under section 89 are only in regard to his discretionary powers or those concerning his individual judgment; while those under 88 are in respect of the whole field of the Provincial executive authority.

(This means the suspension of the whole Constitution, except the portion regarding a High Court and including the power to make laws for the Province). No such Proclamation shall be made by a Governor without the concurrence of the Governor-General in his discretion, and must be submitted to the Secretary of State.

(20) Under Section 108: Unless his previous sanction is given, no Bill or amendment can be introduced or moved in the Provincial Legislature which repeals, amends or is repugnant to any Governor's Act or Ordinance promulgated in his discretion by the Governor; or any Act relating to any Police Force.

(21) Under Section 111: The suspension of sub-section (1) prohibiting discrimination against any British subject domiciled in the United Kingdom, in the event of the Governor's certifying, by public notification, that, for the prevention of any grave menace to the peace or tranquillity of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of Sub-section (1) of Section 111 should be wholly or partially suspended.

(22) Under Section 119: No Bill or amendment which prescribes professional or technical qualifications, or imposes any disability, restriction or condition in regard to the practising of any profession or carrying on any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in the provincial legislature without the previous sanction of the Governor, and the sanction of the Governor for such introduction or moving is given in his discretion.

(23) Under Section 123: To carry out the directions of the Governor-General in relation to defence, external affairs, or ecclesiastical affairs.

(24) Under Section 226: No Bill or Amendment could be introduced granting a High Court Original Jurisdiction regarding the collection of revenue according to the usage and practice of the country, without the previous sanction of the Governor granted in his discretion.

(25) Under Section 242: As regards the application of the Sections concerning the recruitment and conditions of the Service, so far as the High Court in the Province is concerned, the Governor may in his discretion direct that no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Provincial Public Service Commission.

(26) Under Section 265: The appointment of the Chairman and other members of the Provincial Public Service Commission, the regulations regarding the number of members of the Commission, their tenure of office, and conditions of service; as also provision regarding their staff.

(27) Under Section 266: To make regulations—general or particular—making it unnecessary to consult with the Public Service Commission in making certain appointments.

(28) Under Section 267: No Bill or Amendment for the purpose of granting additional functions to be exercised by the Provincial Public Service Commission should be introduced or moved, without the previous sanction of the Governor to be granted in his discretion.

(29) Under Section 270: No civil or criminal proceedings can be instituted against any person in respect of any act done as a servant of the Crown in the Province except with the consent of the Governor of the Province, to be granted in his discretion.

(30) Under Section 271: No Bill or Amendment to abolish or restrict the protection accorded to certain servants of the Crown in India, by Section 197 of the Indian Code of Criminal Procedure, or by Sections 80-82 of the Indian Code of Civil Procedure, shall be introduced or moved in the Provincial Legislature without the previous sanction of the Governor in his discretion.

(31) Under Section 305: The appointment, salaries, allowances, office accommodation and other facilities for his Secretarial staff.

(32) Under Section 308: As regards certain permissible amendments to the Government of India Act, 1935, the effect of the proposed amendments upon the interests of any particular minorities in the Province, must be reported upon to the Secretary of State by the Governor acting in his discretion.

Critique of the Governor's Discretionary Powers

Taken collectively, the effect of all these powers and functions, to be exercised by the Governor in his discretion, is that: **substantially the most important part of the executive work is removed from the sphere of the Governor's Constitutional Advisers.** Even as regards the legislative work, effective powers of initiative and control are reserved to the Governor, in addition to the numerous safeguards contained in the right to recommend Bills, to reserve them when passed for consideration by the Governor-General, or by the King-Emperor. From the moment of its being summoned to its dissolution, the Governor dominates the Legislature by his powers of initiation, direction, and regulating procedure. No act of the Legislature is complete without the Governor's assent; but no Governor's Act needs the concurrence of the Legislature, to be binding.

The Governor is thus not merely the ornamental chief of the Government; he is also its effective controlling and dominating head. The Ministers are his nominees, to be called into meeting when he chooses, to deliberate under rules made by him, and to administer departments assigned to them by the Governor.

The Ministerial subordinates and departmental secretaries are entitled to direct access to the real head of all departments of the Government, to whom they must supply all information required by the Governor; while the latter is not bound to disclose the information, or even the sources of his information, in certain subjects to his Ministers.* The officers working under the Ministers are under no disciplinary subordination to the Ministers; and in the event of any disciplinary action by a Minister, are entitled to appeal to the Governor. If under these conditions, the new Constitution claims to provide a real measure of self-government to the people of the Province, they would need a highpower miscroscope to discover it when they come to work the Constitution.

Powers and Functions of the Governor to be exercised in his Individual Judgment

In contrast with these, there are relatively fewer sections under which the Governor is empowered to

*Says the Joint Select Committee of Parliament: (Para 95, page 53 of the Report).

"We, therefore recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism, should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector General may direct, or such other public officers outside that Force, as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions."

act in the *exercise of his individual judgment*; that is to say, after consulting his Ministers, without necessarily being bound by their advice.

The most important of these relate to the so-called *special responsibilities* of the Governor. These are laid in *Section* 52:—

(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;

(*b*) the safeguarding of the legitimate interests of minorities;

(*c*) the securing to, and to the dependants of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;

(*d*) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;

(*e*) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;

(*f*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(*g*) the securing of the execution of orders or directions lawfully issued to him under Part VI of

this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

We shall make some brief comments on the doctrine of special responsibilities later on.

Apart from these special responsibilities, the Governor exercises his individual judgment:

(1) Under Section 55, in the appointment and dismissal of the Advocate General, as also in regard to the determination of his remuneration;*

*Cp. ante p. 78.

(2) Under Section 56: Where it is proposed that the Governor of a Province should, by virtue of any powers vested in him, make or amend or approve the making or amendment of any rules regulations or orders relating to any police force, whether civil or military, he must exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organization or discipline of that force;

(3) Under Section 68 (2): In declaring vacant the seat in the Provincial Legislature of any person, who has been elected member both of the Federal Legislature and of a Provincial Legislature, at the expiration of such period as may be specified in the rules made by the Governor in his individual judgment.

(4) Under Section 88 (1): In promulgating Ordinances, if at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action: Provided that the Governor must exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to its introduction into the Legislature.

(5) Section 119 (3): All regulations made under the provisions of any Federal or Provincial law, which prescribe the professional or technical qualifications requisite for any purpose in British India, or impose by reference to any professional or tech-

nical qualification, any desirability, liability, restriction or condition in regard to the practising of any profession the carrying on of any occupation, trade or business, or the holding of any office in British India, must, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or as the case may be, the Governor. If within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor, that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well-founded, may at any time before the regulations are expressed to come into operation, by public notification, disallow the regulations or any of them.

(6) Under section 151 (1): Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation, or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe the procedure to be followed in respect of the payment of the money therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(7) Under Section 228 (1): The administrative expenses of a High Court, including all salaries,

allowances and pensions payable to or in respect of the officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the Province, and any fees or other moneys taken by the Court shall form part of those revenues.

The Governor must exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

(8) Under Section 246 (2): Appointments and postings to the reserved posts must, in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(9) Under Section 247 (2): Any promotion of any person appointed to a Civil Service or a civil post by the Secretary of State, or any order relating to leave of not less than three months of any such person or any order suspending any such person from office, must, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(10) *Ibid* (3): If any such person is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor exercising his individual judgment.

(11) Under Section 248 (2): No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments, or rights in respect of his pension, or decides adversely

to him the subject matter of any memorial, shall be made except, if he is serving in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment.

(12) Under Section 258 (1): No civil post which, immediately before the commencement of Part III of this Act, was a post in or required to be held by some member of, a Central Service Class I, or II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished except,—in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(13) *Ibid* (2): No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except, —in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(14) Under Section 262 (2): The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified

in the declaration. The same applies in essence to the temporary employment for any purpose of a non-British subject.

Provided that if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General; but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

(15) Under Section 271 (3): Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs ordered to be paid by him, shall, if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on revenues of the Province.

(16) Under Section 300 (1): The executive authority of a Province shall not be exercised, save on an order of the Governor, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant of confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

The Effect of Special Responsibilities and Discretionary Powers upon the Constitutional Position of the Governor.

The doctrine of Special Responsibilities has been evolved to meet the special circumstances of India, under British Imperialist domination. Given the peculiar structure of the Provincial Legislatures, as also the existence of Communal fissures, it has been thought necessary, at least in the transitional stage, to give special powers to the Governor, in order to hold the scales even between the various communities, as also between the several interests that make up an Indian Province.

This justification is, however, apart from that ideal of Constitutional evolution, which consists in establishing the supremacy of the Legislature over the Executive, achieved, in practice, by making the Ministers responsible for their actions and policies to the Legislature. The responsibility is enforced by the Ministers being removable by a vote of "no confidence" in the Legislature, even though they are not appointed directly by the Legislature.

There may, indeed, be a nominal head of the Executive as well as of the Legislature, like the King in England. In theory, at least, the Governor in an Indian Province is the representative of the King in England; and, therefore, acting as the King in England would act in regard to the Government of the United Kingdom. But the presence of these special powers conferred upon the Governor, in which he need not consult his Ministers; or, having consulted

them, need not be bound by their advice, militates gravely against the development of that constitutional convention, which would make the Governor a truly constitutional executive head, with no activity apart from that advised by his responsible Minister.

It is, accordingly, not too much to read, in these powers granted to the Governor, a deliberate distrust of the growth of Constitutionalism on the English pattern in India. So long as the Governor continues to enjoy these powers, and so long as these powers are not merely nominal, but are likely to be actively employed in the daily administration of the Province, it is impossible to believe that, in the near future, the Governor would become in all respects a true Representative of the English King in India, and allow the Government of the Province to be carried on in strict accordance with constitutional usage and ideals, as prevalent in England.

Critique of the Special Responsibilities

Even if we take those powers of the Governor which he is to exercise in his individual judgment, and which relate, for the more important part, to the so-called Special Responsibilities charged upon him by the Act, we find that the nature of these Responsibilities is so vague as to make it unlikely to keep them within any specific limits. For instance, there is no definition given of what should be called **Minorities,** whose legitimate interests it is supposed to safeguard as his own special responsibility.* Nor is there, similarly, any clear defintiion of what is

*Cp. however, the Instrument of Instructions given in the Appendix to this Chapter.

meant by these *legitimate interests.* But the Minorities which are to-day understood to demand special attention from the Executive Government are on social or Communal lines, *e.g.*, the so-called Depressed Classes within the Hindu fold. The line of division which keeps, at the present moment, the several communities of India apart from, and perhaps hostile to, one another, is unnatural, or at least artificial. Under the conditions of modern economic development, they are likely to become obsolete very soon. If these lines disappear or weaken, or if any such lines like those in regard to the Non-Brahmins, Depressed Classes or the Untouchables, within the Hindu fold, become coincident with the economic lines of social stratification, the Political Parties of the future may, quite possibly, wear a different aspect from that at present regarded as the most prominent. The Landlords, for instance, can always claim to be a Minority, whose legitimate interests—such as those involved in the maintenance of the Permanent Settlement,—the Governor may be called upon to treat as a Special Responsibility; and so interfere in the constitutional carrying out of a social reform, which is overdue by at least half a century. In the course of transition from the present day artificial lines of Communal division to the more real lines of economic difference, there is every likelihood of reforms being undertaken in the actual system of government, which may be opposed by groups that tend progressively to become Minorities. Their opposition may, quite plausibly, wear a Communal aspect, *e.g.*, the Muslim opposition to the Age of Consent

Legislation. The spirit of the clause in the Lucknow Pact, already quoted, which requires a $\frac{3}{4}$ majority of the Members of a community in a Legislature to discuss any measure alleged to affect a community as such, also points in the same direction. If, however, the Governor is entitled, by special provisions of the law, to devote particular attention to the "legitimate interests of Minorities"; and if no definition is provided as to what constitutes such legitimate interests, or how many Minorities are to be thus specially protected, there is every likelihood of the danger that, on the pretext of protecting the legitimate interests of Minorities, the Governor's Special Responsibility may be exercised, in his individual judgment, in order to obstruct social reforms or economic reconstruction.

The answer given to these arguments by the Authors of the Joint Select Committee of Parliament on this Act, when it was in Bill form, is neither convincing, nor does it remove the anxiety created by such provisions in the Act.

Says the Committee: (Para 79):

> "We doubt if it would be possible to define 'legitimate interests' any more precisely. The obvious intention is to secure some means by which Minorities can be reasonably assured of fair treatment, at the hands of majorities, and 'legitimate interest' seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal definition of 'minorities', the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and more important minorities, in

> whose interest the Governor's powers will usually be invoked; but there are certainly other well-defined sections of the population who may from time to time require protection; and we can see no justification for defining the expression for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless, to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plan and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform, merely because it is resisted by a group of persons who might claim to be regarded as a minority."

The same thing may be said with regard to the very first special responsibility, namely, the prevention of any grave menace to the peace or tranquillity of the province. What is the nature of the menace against which this responsibility is intended to be exercised? The experience of the last twenty years in India shows that the present Government is inclined to look upon any agitation for the accomplishment of self-government by the Indian people themselves as a "subversive" activity, and, as such, a menace to the peace and tranquillity of the government established by law in this country. One might agree that crimes of violence, deliberately intended to terrorise Government or Public Servants into adopting a given policy, may be regarded as a menace to the peace or tranquillity of the country, though the ardent advocates of the Indian emancipation may well urge, in vindication of his own attitude, that even peace or tranquillity of a country can be pur-

chased at too great a cost to the *morale* of a people in the continued subjugation of one people to another. But when history records the extension of the doctrine of special powers necessary to defeat "subversive activities", even when they are admittedly non-violent and consist in the passive persuasion of the citizens to a particular line of action, it is impossible not to dread the infinite possibilities, in practice, of such Special Responsibilities being exercised with a view to stamp out the least ember of self-respect among the people, or their desire for political self-expression.

The Joint Select Committee hold that:

> "Terrorism, subversive movements and crimes of violence are no doubt among the graver menaces to the peace or tranquillity of the Province. But they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw."*

Not only do these Special Responsibilities entrusted to the Governor suffer from vagueness or lack of clear definition; they are calculated in practice to subvert all discipline in the administrative services of the country, and to demoralise the Responsible Government of the Province. The Ministers would not feel any sense of responsibility in tendering their advice on questions in which they know that the Governor is not bound to follow their advice. They would, therefore, naturally be either indifferent, or reckless. Moreover, the fact that in several cases the subordinates are entitled by law to appeal to the Governor, or required not to communicate infor-

*(op. cit. loc cit).

mation to their official chiefs, namely, the Ministers, is sufficient to undo or weaken the bonds of official discipline, which are indispensable in the proper government of the country. It is universally admitted that the strength of the government in Britain, notwithstanding the changing personnel of the Ministry from time to time, depends upon the absolute loyalty of the Permanent Civil Service to their political chiefs, whoever they may be, for the time being. But it is equally true that, in India, members of the Permanent Public Service have made no secret of their hostility to the evolution of constitutionalism. Consequently, it is not too much to assume that, for years to come, high-placed public officers, especially of non-Indian birth, may be unwilling to submit themselves in loyal co-operation with their official chiefs. It is equally to be feared that when such cases of tacit refusal to collaborate with the Ministers become rank insubordination, and Ministers propose to punish them accordingly, these public servants would take shelter under the Special Responsibility of the Governor in their behalf. This does not bode well for the efficiency or the success of responsible Ministers in the provincial governments of India.

Even the constitution of the Ministry itself is a matter within the sole discretion of the Governor. He is to be instructed by his Instrument of Instructions to see to it that important Minorities are duly represented in composition of the Ministry.* Members of Minority Communities may, no doubt, be found in a political party commanding the absolute majority of votes in particular legislatures. If so, the letter

*Vide Appendix Art. vii.

of the law would be fulfilled so far as the Governor's Special Responsibility in this behalf is concerned. But even then the fact that the Governor alone **in his discretion** is to appoint the Ministers, to distribute the work amongst them, to summon them to meetings, to preside at their deliberations, to obtain information, if necessary, over the head of the Ministers in particular matters, from their official subordinates, and that the Governor should be entitled not to disclose what advice he received from any inidividual Minister in any particular instance, are calculated to weaken, if not prevent altogether, the sense of collective responsibility among the Ministers themselves, which it must be the object of true constitutionalism to develop.

Taking all these facts together, and bearing in mind that the Governor is independent of the Legislature as well as of his Ministry; that he has considerable law-making and financial powers, we cannot but feel that the actual position of the Governor in the administration of the Province will be overwhelmingly important, if not dominating. In these most important points, the Governor has special powers of his own, in that his previous consent is necessary to the introduction of certain kinds of Bills in the legislature, and that he is entitled to **recommend** certain other classes of bills; that he is entitled to assent to the Bill passed by the local legislature, as also to **reserve** any bill so passed for the significance of the pleasure of the Governor-General or of the King-Emperor. He is also entitled to pass Ordinances and certain Governors' Acts, in addition to his right to suspend the whole Constitution, when a

situation arises under which, in his opinion, the administration of the province cannot be carried on in accordance with the provisions of the Act of 1935.

As regards the financial position, the Governor is entitled to see to it that the expenditure necessary for the conduct of administration, particularly in these matters in which he has, under the law, special responsibilities, is duly provided for.

In fine, the real position of the Governor is admirably summed up in the following extract from the Report of the Joint Parliamentary Committee that considered the Constitution in Bill form:*

> "It is clear that the successful working of responsible Government in the Provinces will be greatly influenced by the character and experience of the Provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919, and we do not think that the part which they will play in the future will be any less important or valuable."

*The Constitutional impasse caused in March, 1937, on the demand of the Congress Party Ministries in the 6 Provinces where the Congress had won majorities in the Legislature, for an assurance from the Governors that, so long as the Ministers pursued their constitutional activities, the Governor would not use his extraordinary powers, has been discussed, in its constitutional aspect, in the volume on "Federal Structure," and need not be repeated here

For the difficult ways in which the Provincial Government (executive) can be controlled by the Governor-General, see "Federal Structure" ch. vi.

Appendix I to Chapter IV

Instrument of Instructions to the Governors

WHEREAS by Letters Patent bearing date the day of 1937 We have made permanent provision for the Office of Governor of

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on the second day of August, nineteen hundred and thirty-five and entitled the Government of India Act, 1935, (hereinafter called "the Act"), certain powers, functions and authority for the government of the province of are declared to be vested in the Governor as Our Representative:

AND WHEREAS, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the Act and the said Letters Patent, belong to his Office, and to the trust which We have reposed in him:

AND WHEREAS a draft of these Instructions has been laid before Parliament in accordance with the provisions of sub-section (1) of section fifty-three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these Instructions:

NOW THEREFORE We do by these Our Intsructions under Our Sign Manual and Signet declare Our pleasure to be as follows:—

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence

of the Chief Justice for time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office or Our Governor of   , and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And we do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE PROVINCE

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise

by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Minister's advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon just political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests, Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his

Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretobefore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIIa. In pursuance of an Agreement made by Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall, if he deems it expedient, fortify himself with the advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

(The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only.)

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers. He shall further in those rules make due provision to secure

that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

XVa. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

(The foregoing paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.)

C.—MATTERS AFFECTING THE LEGISLATURE

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill, Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill or any of the clauses herein specified, that is to say:—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

(*c*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;

(*d*) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description, Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIIa. Our Governoı in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar, or in notifying Our assent to any such Bill reserved for the signification of Our pleasure, shall state that assent to the Bill in its application to Berar has been given by virtue or assent of His Exalted Highness the Nizam to the aforesaid Agreement.

(The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.)

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature, in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may

have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—GENERAL

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province; and to secure amongst all classes and creeds co-opreation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX.

FORM OF OATH OF ALLEGIANCE

I, , do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE.

I, , do swear that I will and truly serve Our Sovereign King, George the Sixth, Emperor of India, in the Office of , and that I will do right to all manner of people after the laws and usages of India without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR MINISTERS

I, , do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in , except as may be required for the due discharge of my duties as such Minister, or as may be specially permitted by Governor in the case of any matter pertaining to function to be exercised by him in his discretion.

So help me God.

CHAPTER IV.

PROVINCIAL EXECUTIVE

The Ministry.

Legal Status

A Council of Ministers for each Governor's Province is set up under Section 50 of the Government of India Act, 1935.*

Unlike as in the British Constitution, the Cabinet of Ministers is given a legal existence and authority. The Prime Minister, however, even now continues to be unknown to the constitutional law in India,† and if one is appointed as such, or comes into being hereafter, he would owe his existence, influence, and authority to the Governor. For, under Section 51:—

"(1) The Governor's Ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor: Provided that the salary of a minister shall not be varied during his term of office.

*Cp. p. 80, **ante** for the text of the Section.

†But see Appendix to the preceding Chapter containing Instructions to the Governor, article VII.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be enquired into by any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion."

Governor and Ministers

The Governor chooses the Ministers, summons them to office and work, and is entitled to dismiss them. They hold office during his pleasure. The only connection with the Legislature, mentioned in this section, is that a Minister must not be outside the Provincial Legislature for more than six months consecutively, on pain of ceasing to be a Minister by such failure. Presumably, membership of either House, in a Bicameral Legislature, would be sufficient; and there is, apparently, no bar to nominated members of the Upper House being also appointed to the Ministry.

Salaries of Ministers

The salaries of the Ministers are, until settled by an Act of the Provincial Legislature, to be determined by the Governor. The tradition hitherto has been that the Ministerial salaries shall be in consonance with the general scheme of such emoluments in the Indian public service. Under the Constitution of 1919, they have been fixed at the same level as, or slightly below that, paid to executive Councillors, *i.e.*, between Rs. 3,000|- and Rs. 5,000|- per month. Aspirants to these posts would, accordingly, be able to say, with more than a show of justice, that the scale of salaries

should not be, under the new Constitution, such as to render them contemptible in the eyes of their high-paid subordinates in the permanent Civil Service, or leave them open to temptation. The latter is a vague, but ominous measure. The former alone is sufficient to indicate that the salaries would be on a scale not substantially different from those now in vogue, *i.e.*, between Rs. 3,000|- to Rs. 5,000|- per month, at least in the more important Provinces. From the point of view of economy in administration, the new Constitution does not hold out much hope of reform in this connection.*

Strength of the Cabinet.

There is nothing stated in the Act about the number of Ministers a Province should have;† nor is it clear whether all the Ministers will receive an equal salary. Sub-section (3) points to the possibility of some difference in individual salaries. The old British model, if followed, will support that idea. The number of Ministers will, in all probability, follow the present tradition,—combining the Executive Councillors and

*In several Provinces under the Act of 1935, the Ministerial salaries have been fixed, either by the Governor's decree or by Act of the local Legislature at between Rs. 1,500|- p.m., (Sindh) to Rs. 3,500|- per month. There is a distinction between the salary allowed to the Chief or Prime Minister (Rs. 4,000|- in Bombay) and other Ministers (Rs. 3,500). Varying scales of travelling and other allowances of a like kind have also been similarly fixed.—all calculated to maintain the existing scale of extravagant salaries and allowances in the Public Service. The only economy, if it can be called economy, is in regard the number of Ministers, e.g., in Bombay, in place of the 4 Councillors and 3 Ministers in the Bombay Government under the greater portion of the Montford regime, there are now only 4 Ministers, at an aggregate cost per month of Rs. 14,500|- as against Rs. 35,000|- p.m. in the first years of the Montford regime. But this makes no allowance for the possible appointment of Assistant or Junior Ministers, Parliamentary or Cabinet Secretaries, &c., all of whom are possible, and may add considerably to the overhead cost of administration.

†Cp. however section 9 for the number of Federal Ministers, and also **"Federal Structure."**

the Ministers under the dyarchical regime into a consolidated Ministry of the autonomous regime.

Congress and Ministerial Salaries

The resolution of the Karachi Sessions of the Indian National Congress (1931), fixing a maximum salary of any public servant in India at Rs. 500|- per month, if enforced so far as the Congress members are concerned, may create a novel situation.* The voluntary surrender of the excess over Rs. 500|- per month by the Congress Party members, if appointed Ministers in any Province, may spell a measure of economy*. But this cannot be universalised so long as the act of renunciation is a voluntary measure; and the benefit of the renunciation will go to the Party Chest, not to country as a whole. The Acts of the Provincial Legislature determining the salaries of the Ministers will, —even in the Provinces where the Congress secures a majority in the Legislature,—be very likely such as to afford no real economy in this matter of the scale of ministerial salaries. And if the popular Ministers themselves do not set an example in this direction, their efforts at economy or retrenchment in the Provincial Budget through reduction in salaries would be doomed to failure, even assuming the Constitution as a whole would permit such changes.

Appointment and functioning of Ministers.

The appointment of Ministers is left, as already noted, to the Governor by law. There is nothing in the law to suggest that he must choose his Ministers in any particular manner, though the Instrument of

*Though the orginal Resolution had fixed the maximum salary at Rs. 500|- p.m. the Special Committee appointed recommended increasing the absolute maximum of any public salary to Rs. 1,000|- p.m.

Instructions to the Governor may,—and does*—lay down certain lines according to which the Governor must select his Ministers. But the Instrument of Instructions, though issued under the authority of the Act,† is not a document which can be taken to a Court of Law for interpretation; nor can any constitutional issue be settled by reference to it in a proper tribunal. It is a Prerogative act of the King, and the King's representative is responsible to the British Sovereign alone for any violation of the terms of that Instrument.

Instructions to Governor for forming Ministries

The Instrument may require the Governor to select His Ministers from among that party in the Local Legislature, which commands a majority of the votes in that body for the time being, so, however, that important Minorities in the Legislature should be represented in the Ministry. If the Party composition of the Legislature is such, that in the Majority Party there is no member of a Minority community, the Governor would be entitled by law to force upon his Cabinet a colleague from a Minority community who may not share their political faith and ideals. This is not calculated to add to the homogeneity, solidarity, or a sense of collective responsibility among the Ministers.

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*See also Appendix to this Chapter for "Instructions to Governors," Article vii.

†"53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend to His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him."

It may, indeed, be that the provincial politicians would themselves see to it that, in their party ranks, are some members of Minority communities, whom the Act suggests, by a Special Responsibility of the Governor, to be included in the Cabinet; and the Instrument of Instructions directs the Governor to do so. But such choice of Ministers—on grounds of Communal complexion, rather than on the strength of the political capacity,—is apt to undermine completely the spirit ot true constitutionalism in the Provincial administration.

Collective Responsibility

The wording of sub-section (4) of Section 51, again, does not at all show that the Ministers will act collectively in offering advice to the Governor, on such matters in which by law they are entitled to offer advice to the Governor, and the latter is bound to follow that advice. The rules of business of the Government,* made by the Governor in his discretion, may provide for individual consultation between the Ministers and the Governor. Again certain minor matters of Government may be left to be disposed of by the Minister concerned, either on his own authority, or with the concurrence of the Governor, as seems to be the case under the Constitution of 1919. In such cases, the tradition and policy of individual advice to the Governor will be continued; and to that extent the development of a spirit of collective responsibility and Ministerial solidarity will be impeded.

*Cp. **ante** p. 79, section 59.

The fact, moreover, that the Governor is entitled to preside at Cabinet meetings,* coupled with the further fact that he is, by law, entitled to demand and obtain all the information relating to every subject in any department of his Government from the Ministers or from the Secretaries, will suffice to make the Governor the real head of the Government, rather than his Prime Minister, if any.

Probabilities of the political complexion of the first Ministries in the leading Provinces

What will be the political complexion of the first Ministries in the Governors' Provinces under the new Constitution? This is necessarily a matter of speculation at the moment of writing. But an analysis of the composition of the Legislature in the important Provinces, coupled with the past experience of the composition of the Legislatures under the Montford Constitution, might supply some data for making a forecast.

The following Table represents the composition of the Legislatures under the Act of 1935 in the Governor's Provinces, including the Legislative Assembly as well as the Legislative Council wherever the Legislature is bicameral.

*Cp. Section 50 (2). But this is a matter of his sole discretion, and not an imperative, categoric, obligation imposed upon him by the Constitution. See also Section 59.

TABLE OF SEATS.

Provincial Legislative Councils

1	2.	3	4	5	6	7	8
Province	Total Seats.	General Seats	Muhamadan Seats.	European Seats.	Indian Christian Seats.	Seats to be filled by Legislative Assembly.	Seats to be filled by Governor.
Madras	Not less than 54 Not more than 56	35	7	1	3	—	Not less than 8. Not more than 10.
Bombay	Not less than 29 Not more than 30	20	5	1	—	—	Not less than 3. not more than 4.
Bengal	Not less than 63 Not more than 65	10	17	3	—	27	Not less than 6. Not more than 8.
United Provinces	Not less than 58 Not more than 60	34	17	1	—	—	Not less than 6. Not more than 8.
Bihar	Not less than 29 Not more than 30	9	4	1	—	12	Not less than 3. Not more than 4.
Assam	Not less than 21 Not more than 22	10	6	2	—	—	Not less than 3. Not more than 4.

Tables of Seats.

Provincial Legislative Assemblies.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		General Seats.												Seats for Women.				
Province	Total Seats.	Total of General Seats	General Seats reserved for Scheduled Castes.	Seats for representative of backward areas and tribes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representatives of commerce, industry, mining and planting.	Landholders' Seats.	University Seats.	Seats for representatives of labour.	General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay ...	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar ...	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North-West Frontier Province ...	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.

In Assam and Orissa the seats reserved for women shall be non-communal seats.

Assuming, that the Congress strength will lie mainly in the General Constituencies, the following probability has the weight of past experience in its favour in the several Provinces.

In Madras, the General seats in the Lower House aggregate 152 out of a total of 215, including 6 seats for women. Out of these, about 140 may be expected as Congress seats, looking to the record of that Province in the last Assembly elections. The chances further are that the 6 Labour seats, and at least 4 Commerce and Industry &c., seats will be captured by the Congress, or those having full Congress sympathy and voting on the Congress side. This would make a total Congress strength of 150, including Scheduled Castes. Even if we regard all Communal seats,—Mussulman, Indian-Christian, Anglo-Indian, and European to be captured by non-Congress or anti-Congress elements, as also the seats (6) reserved for landholders, there is bound to be an absolute Congress majority in the Madras Assembly, varying from 85 to 65 at the lowest,—*i.e.*, allowing for a further reduction of the Congress strength in the Scheduled Castes seats of 10. The composition of the Legislative Council will not materially affect this balance of Parties in the Madras Legislature, and so we may assume that the Legislature would be overwhelmingly Congress-minded, if not actually owing Congress allegiance.*

*The above estimate was made while the General Elections to the Provincial Legislatures had not yet taken place. The actual result, as given in the Congress Analysis of Elections Results, or in the public Press, is given in the case of each Province in the foot-notes attached.

ANALYSIS OF MEMBERS BY PARTIES

Madras	Legislative Assembly	Council
Congress	159 (215)	26 (46)
Justice	17	
Independents	15	

(*Continued on page 129*)

In Bombay, out of a Total of 175 seats, 119 are general seats, including 5 women. Out of these, assuming that the Scheduled Caste representatives would be Congress-minded only to the extent of one-fourth of the seats reserved for them; and that some Parsis of non-Congress sympathies might find their way into the Assembly through this open door, the total Congress strength from the General electorate may be put at about 100. Counting the 7 Labour seats, and 3 out of the 7 Commerce and Industry seats as likely Congress captures, it is not unlikely that the Congress may command in Bombay a total of 110, or a majority of 35 to 45, assuming that all Communal and special seats would go to non-Congress or anti-Congress elements. The Legislative Council of from 29 to 30 will, in this Province also, not materially affect the strength of Parties in the aggregate Legislature.*

(Continued from page 128)

	Assembly	Council
People's Party	1	
Muslim League	11	
Muslim Progressives	1	7
European Commerce	3	1
European General	3	
Indian Christians	..	3
Madras Planters	1	
Anglo-Indians	2	
S. I. Chamber of Commerce ..	1	
Nattukottai Nagaratharo Assn. ..	1	
Others		9
Total	215	46

The actual Congress majority in the Madras Assembly is 93.

*The actual result in Bombay was:

	Legislative Assembly	Council
Congress	87	13
Muslim League	19	2
Muslim Independent	11	
Other Independent	18	
Independent Labour Party	13	8
Non-Brahmin	8	
Europeans	6	1
Democratic Swaraj Party	6	2

(Continued on page 130)

In Bengal, the General seats are only 80 in a House of 250, including 2 women. The Congress may capture all these 80 seats, and add to them 6 out of the 8 Labour seats, 2 out of the 5 Landholders', and 5 out of the 19 Commerce &c., seats. Perhaps 1 of the 2 University Seats may also go to the Congress. Even so the maximum Congress strength (about 95) will not exceed 100, and may be considerably less. This assumes, of course, that all Muslim and other communally elected Legislators would be non-Congress, or anti-Congress,—not an absolutely valid assumption. But unless the Congress secures at least 40 out of the total Communal seats in that Province, and loses not a single one of the General and other seats shown above as Congress probabilities, there can be no Congress majority in the Bengal Legislature. The Legislative Council also is a fairly large body of from 63 to 65 members, in which the Governor's nominees may aggregate as many as 8. There is no reasonable prospect of the Congress securing even a bare majority in the Bengal Assembly or the Legislature collectively,—though a Coalition Government with the Mussulman members sympathetic to the Congress is not beyond the bounds of possibility.*

(*Continued from page 129*)

	Assembly	Council
Indian Christians	3	
Peasants	2	
Anglo-Indians	2	
Total	175	26

The Congress position in Bombay is much weaker than estimated above; but it is still in a majority of about 9 in the Assembly counting those who would usually vote with the Congress.

*The actual position in Bengal was:

	Legislative Assembly	Council
Congress	54	9
Muslim Independents	42	17 (Muslim Independents, Muslim League, Praja Party together)
Muslim League	40	
Praja Party	40	

(*Continued on page 131*)

In the United Provinces, out of a total of 228 seats in the Assembly, 144 are General, including 4 women. These may be regarded as Congress seats, at least to the extent of 120,—allowing for half the Scheduled Castes seats (10) and other 10-14 seats to be captured by non-Congress or anti-Congress elements. Against this, we may reasonably assume the 3 Labour seats, 1 University seat, 1 Commerce, and 10 at least out of the 64 Muslim seats to be likely to fall to the Congress share. Altogether, then, a clear majority of about 40 in a House of 228 is not unlikely at all in the United Provinces; and it may in actual fact be much larger. The Legislative Council of at most 60 may reduce the Congress strength in the aggregate Legislature; but it will not wholly destroy the majority even in a combined sitting.*

In the Punjab, the case is different. In a House of 175, there are only 43 general seats, including 1 woman. Assuming that the Sikhs (32) will be largely

(Continued from page 130)

	Assembly	Council
Independent Hindus	37	1
Europeans	25	3
Anglo-Indians	4	
Nationalist (Hindu)	3	
Hindu Sabha	3	
Indian Christian	2	
To be elected by the Assembly		27
Total	250	58

*United Provinces

	Assembly	Council
Congress	134	8
Muslims	66	
Landholders	6	
Indian Christians	2	4 N. A
Anglo-Indians	1	
Europeans	4	1
Independents	15	39
Total	228	52

N. A.—Nationalist Agriculturists

of Congress sympathy, even if not actually owing allegiance to the Congress, the total Congress strength cannot much exceed 75, allowing for the capture of the Labour seats, and the losses in the General or Sikh seats. Of the 86 Muslim seats (including 2 women), it is unlikely that the Congress captures more than 10, if even so many. Even then the Congress-minded members will not command a majority in the Punjab Assembly. There is no Second Chamber in that Province luckily; and so no allowance need be made on that account.*

Bihar, shows a better prospect for the Congress. Of the 152 seats in the Assembly, the General seats are 89, including 3 women. These may almost all be Congress captures. Let us however, assume only 80 to be Congress captures, to which 3 Labour seats and 1 University, 1 Commerce, and even 1 Landholders' may safely be added. Out of the 39 Mussulman seats, as many as 80 may in that Province fall to the Congress share. There may thus be a comfortable majority of 50 or thereabout, in the Bihar Assembly for the Congress; while the Legislative Council of 30 at most will not in any way disturb that majority.†

*The actual position in the Punjab Assembly is:—

Congress	30
Unionist	99
Independents	16
Khalsa Nationalists	13
Hindu Election Board	12
Ahrar	2
Itihad-e-milat	2
Muslim League	1
Total	175

Here also the Congress position is much weaker than the above estimate.

†The actual position in the Bihar Assembly and Council was:—

	Assembly	Council
Congress	98	8
Independent Muslims	15	8

(Continued on page 133)

The same condition is likely to be repeated in the **Central Provinces.** The total strength of the Assembly is 112, and 87, including 3 women, are General seats. Even if only 80 of these are captured by the Congress,—a highly probable eventuality,—there would be a majority of about 50, if we take it that the 3 Labour seats will fall to the Congress-minded candidates. There is no Second Chamber in that Province.*

Congress and Ministers

Of the remaining Provinces, Assam and Orissa may possibly command a Congress majority; while the N. W. F. Province and Sind may be outside the Congress pale.†

(Continued from page 132)

	Assembly	Council
United Muslims	6	
Europeans	2	1
Constitutionals . .	2	(Indep.) 9
Anglo-Indians . ..	1	
Indian Christians	1	
Loyalists	1	
Ahrars	3	
No Party	23	
Total	152	26

*The actual position in the Central Provinces Legislative Assembly is:—

Congress ..	70
Muhammadans ..	14
Non-Brahmins ..	3
Ambedkarites ..	4
Nationalists ..	2
Others ..	19
Total	112

†In Assam the actual position is:—

	Assembly
Congress ..	35
Independents ..	25
Muslim League ..	9
Other Muslims ..	10
Europeans ..	9
Labour ..	4
United Peoples' Party ..	3
Indian Planters ..	2

(Continued on page 134)

In 6 out of the 11 Governor's Provinces, the Congress has majority; while even in the remaining 4, the forces of Nationalism are not negligible. Will the Congress Party assume the responsibility of office? Or will they prefer to act in Opposition, whatever their strength in the Legislature?* If the latter alternative is adopted, there is a risk that the Congress-minded, though not professed Congress nominees, in the Legislature may gradually fall off. The allegiance, again,

(*Continued from page 133*)

Praja Party ..	1
Indian Christians ..	1
Backward Areas ..	9
Total	108

The actual position in Sind is:—

United Party ..	23
Congress ..	7
Azad Party ..	3
Muslim Party ..	3
Hindu Sabha ..	4
Independents ..	17
Europeans ..	3
Total	60

N. W. F. Province Assembly:

Congress ..	19
Nationalists ..	7
Muslim Independents ..	23
Indep. Hindus ..	1
Total	50

Orissa:—

Congress ..	36
United People's Party ..	5
National Party ..	4
Independents ..	11
Nominated ..	4
Total	60

*This portion is kept as it was in the 1st Edition. Subsequent developments and constitutional impasse are discussed in the **Federal Structure.** Also cp. note, **ante,** p. 111.

of quite a respectable proportion of Congress followers proper may be severely shaken, if the formal and final decision of the Congress is to refuse to accept Ministerial office in the Provincial Government. Many Congress men of to-day, when elected, will, in many provinces, endeavour their utmost to persuade the Congress to assume Ministerial responsibility, on the grounds, mainly, of keeping out undesirable elements, commanding key positions, and obstructing from within, and so rendering the Constitution as a whole unworkable and absurd. It must be admitted that the Congress ranks have shown, since the decision of the National Convention of March last at Delhi in favour of a conditional acceptance of Ministerial responsibility, in the Provinces where the Congress has a majority, admirable solidarity. The two first considerations are, essentially, of a negative value, though not necessarily negligible on that account.

Congress Ministers

But this process of *reductio ad absurdum* has its own dangers, in so far as the temptation of monetary gain, as well as the consciousness of power, however nominal or illusory, is bound to make such obstruction from within progressively weakening. The powers reserved to the Governor in his sole discretion, enumerated above; and those to be exercised by the Governor in his individual judgment,—*i.e.*, after a nominal consultation with his Ministers, but without any obligation to adopt the advice given by the Ministers or any of them,—are, in themselves, sufficient to preclude any chance of effective opposition to the Governor; and much less for any good to the Province falling to the share of the Ministers. The intangible, but by no

means insignificant, consideration of the spirit of the place must also not be overlooked. Once you enter the Office-room, and take charge of the powers (?) and responsibilities attached thereto, the mind of every ordinary person would unconsciously try to work the position constructively rather than destructively, legally rather than illegally. Ministers would, therefore, unconsciously become hypnotised by their office, even when they are not flattered into forgetfulness of their pledges by their official subordinates. And if, as is likely, Governors develop an astute political sense, and yield on all small matters to their Ministers, they can easily harness to their Imperialist engine all the influence of their Ministers, no matter what their election professions, or ultimate objectives.

The Ministry collectively is appointed and summoned by the Governor in his discretion, and liable to be dismissed, singly or collectively, by the same authority. This, however, may be so used by an astute Governor as to neutralise the opposition, or obstruction from within of Congress Ministers. Many of the Congress members of the Legislature, again, may find the temptation of the salary attached to the Ministers' posts to be so considerable as to make their opposition to the Governor, even within the permissible field, but perfunctory, and only in appearance.

Influence of the Permanent Services

Even if all the members of the Ministry are equally strong-minded and well-informed; even if the Congress follows a definite, determined, constructive policy in the actual governance of the Province, the presence of an unshakably entrenched Civil Service, with definitely anti-Congress sympathies in the main, and

inspired by traditions of a non-responsible, non-removeable Bureaucracy, will militate seriously against any practical success being attained by the Congress Party as Ministers, even if other factors do not operate against them.

There is, moreover, the reserve power vested in the Governor to override the Legislature in matters of legislation; to pass Ordinances and Acts apart from or without consultation with the Legislature,* which would rather tend to end or suspend the Constitution, the moment it becomes unacceptable to the vested interests,—both Indian and non-Indian,—than to make concessions and yield in essential particulars of general policy.

Financial Handicap of Congress Ministers

Finally, there is the consideration of finance. As will be shown more fully hereafter, there is very little authority open to the Ministers to initiate reforms in the administration which may add to the expenditure, or which may involve drastic retrenchment.†

It seems, therefore, on a consideration of all the relevant factors, that the Congress Party in the several Provinces, accepting Ministerial responsibility, even when it commands an absolute and substantial majority in the Legislature, will, under the Constitution as it stands, invite more embarrassment, disappointment, and failure for itself, its ideals and programmes, than accomplish any real good in the government of the Province, or the welfare of its people. It may, indeed, find a good and relatively safe platform to preach its

*Cp. Sections 88, 89, 90 and 93 of the Act. **ante** pp. 83-86.

†Cp. below Chapter VII.

gospel of National Emancipation, and prepare the people for the next stage of the struggle. By occupying this platform, it may keep out undesirable elements from strategic positions, which may be of immense importance on the day of crisis. But when all this is said in favour of accepting Ministerial Responsibility under the new constitution, one must also remember: (1) the incongruity of a Party, officially pledged to render the new Constitution abortive, becoming the chief midwife and nurse at the birth of the monster; (2) the handicap created by the discretionary and other extraordinary powers of the Governor; (3) the statutory privileges of the Services; and (4) the ignorance and inexperience, in many cases, of parliamentary democracy and administrative technique in the Congress Ministers themselves,—which would, individually and collectively, render such Ministers no great success from any point of view.

Handicaps of Popular Ministers under the New Constitution*

Ministers, under the new Constitution, may plume themselves on the theoretical position of being popular mandatories in their Province. But however completely they may possess the confidence of their compatriots, they would not be able to make the popular view prevail, in any case in which it goes counter to the settled principles of government adopted by the British rulers of the country. Apart from the restrictions, however, which, as we have seen, the innumerable discretionary powers given to the Governor may cause; apart also from the mortifying feature of the

*This section applies, it need hardly be stated, to the average politician now most prominent in the leading Parties.

Constitution, which empowers the Governor, in several cases, to seek his Ministers' advice, without any obligation to be bound by that advice; the Ministers have their own particular handicaps, which would, in practice, materially diminish the effective power and influence they can wield in the governance of the country. (*a*) Their own ignorance of the routine of government,—as also the lack of experience in handling subordinates,—is a handicap that may be expected to disappear in course of time. This ignorance or inexperience is not their fault, but rather their misfortune. For, until now, Indians have never had any opportunity to rule their country in the last 80 years; and it is only real power which teaches the proper exercise of that power; real responsibility which teaches a sense of true responsibility. Even in the days of Dyarchy, either true strongwilled Nationalists, possessing the full confidence of the people, did not go to the Legislatures, and so could not take office; or, if any of these did go, they felt themselves traitors, and so were never more than half-hearted in the Ministerial posts. Hence lack of familiarity with the mechanism of politics in many of the leading figures in the political world of India; and their consequent inability to grasp the real issues of modern world politics, must be regarded as responsible for that ignorance and inexperience which will make the greatest handicap of these persons, if and when they become Ministers.

This would, of course, be the case in regard to such Ministers as are composed of Congressmen who had, since 1919, boycotted the traditional constitutional methods of political work; and so deprived the leaders of that Party from that insight and experience of administrative needs in a large modern province, with-

out which the most powerful Ministry, in the popular sense, would be unable to accomplish any real good. In those Provinces, however, in which the Congress Party does not command a majority in the Legislature, Ministries may be formed by coalitions with Minority Parties, which, however, will have handicaps of their own.* In no Province is the Congress Party likely to be an insignificant Minority. Its vote will, therefore, be a force to be reckoned with. Its discipline and the resolve to make the new Constitution unworkable, will always make it the focus of all the malcontents in the Parties forming Coalition Ministries. Those Ministries will, therefore, never be stable,—if the Congress Party remains true to its resolve to wreck this Constitution by undermining it from within the Legislature. Unable to feel a sense of stability, and always anxious to placate the several discordant elements which make up the Coalition, such Ministries will, necessarily, be unable to have a definite programme to which they could consistently devote themselves; and so, in their charge, there can be no hope of any real benefit being done to the Province by such Ministries.

Inferiority Complex

(b) Apart from the strategical difficulties of non-Congress Ministries, there is a further consideration,—somewhat intangible, it is true, but nonetheless real. Psychologically, politicians in India, who have hitherto seen the salvation of the country in co-operation with British Imperialism, and who, in their inmost hearts, have dreaded or disbelieved in the fitness of the Indian people to rule themselves, are unconsciously so defer-

*This has happened in the Punjab, Bengal, Assam, Sindh, and the N.W.F. Province.

ential towards their British masters or monitors; so lacking in self-confidence; so distrustful of the democratic possibilities of this country, that they would go a long way to make their policies,—such as they are,—harmonise with the fundamental interests of the dominant partner in the Empire. Further, they would mostly be people, or parties, representing vested interests, who are necessarily in a minority in a country so hopelessly poor as India, and where all avenues of profitable work are monopolised, for all practical purposes, by the foreigner within the gates. The preservation of their vested interests cannot be achieved, except with the support of the foreign power. Hence, they must needs be committed, unconsciously, perhaps, to a policy of subordinate co-operation with the British element in India,—whether in the Services, in Industry, or in Commerce. The price of British co-operation is, naturally, opposition to the legitimate ambitions of the Indian proletariat and the Indian peasantry,—if the phrase can be used for the non-landowning agriculturists of this country. Ministries made of such elements can, therefore, hardly expect that complete popular sympathy and support, which the Nationalist elements proper are most likely to command, even when their policy appears to be negative,—obstructionist, or destructive. For in that destruction lies the promise of a new reconstruction, which may afford a greater social justice, larger life, and better opportunities, than the present social system, supported in effect by British bayonets, can provide.

Ministries and Parliamentary Majorities

The influence of Party sentiment would, of course, be progressively increasing, if not in the actual gover-

nance of the country, at least upon the fortunes of the Ministers. The Governor, it is true, is empowered, in his discretion, to summon the Provincial Legislature, and even to dissolve it,—not to mention the ultimate weapon of the wholesale suspension of the Constitution.* But,—apart from a total abrogation or suspension of the Constitution, which, when it takes place, will more effectively accomplish the aims of the so-called obstructionist elements in Indian politics than anything they can themselves do,—every dissolution, whether ordered by the Governor or advised by his non-Nationalist Ministers, will result in a new additional wave of Nationalism, which would leave no pretence for constitutional existence to such unrepresentative Ministries. The one clearly defined political issue in India is: whether there shall be the continued domination and exploitation of this country by British capitalism; or whether the Indian peoples' right to self-expression in the political fields shall be permitted full scope. Other issues there may and will be. But until the complete transfer of real power in the governance of the country is achieved, and Indian Nationalist consciousness satisfied, these other issues, even of social reform or economic reconstruction, will recede into a shadowy background and fail to capture popular imagination.

Party majorities in the Provincial Legislatures backing the Ministers for the time being in office will, therefore, be fluctuating in all those Provinces where the Congress Party does not command an absolute majority, but yet is sufficiently disciplined and cohesive to offer the most efficient opposition. For some time, the presence of a foreign element, coupled with the

*Cp. Section 93. Post p. 226-7.

Communal distrust, may render party lines unnatural and unreal. But the first taste of real power, however limited that power in practice may be, will emphasise those abiding issues dividing the political minded citizens which will soon shape themselves into new Parties. India may not follow entirely the Anglo-Saxon analogy of having in the State only two Parties, —the third Party, if and when it emerges, gradually merging into or absorbing one of the two historic Parties in the State. But even if the French model of varying groups combining from time to time, in the life-time of one and the same Legislature, is adopted, the lines of demarcation between the groups will have to be essentially different from those which now distinguish the Independents and Liberals, the Nationalist Congressmen and the Congressmen *pucca*,—not to mention Congress Socialists. It is possible there may be Agrarian and Industrial groups. In so far, however, as the common respect for property, and the right to appropriate for private gain the surplus value created by human effort is concerned, there will be little to demarcate between the Agrarians,—representing the Landlords,—and the Industrialist representing the big Capitalist elements. The Communal Line, and even the Brahmin *vs.* Non-Brahmin distinction, will, whatever its strength to-day in particular Provinces, weaken in course of time, when the real cleavage between those who have and those who have not is thrown into bold relief.

Political Consciousness of the Masses

To develop, however, keen and clear political consciousness in the mass of the Indian people, it is not

enough to stress the inevitable antagonism between a foreign Imperialist and exploitive element, keeping a stranglehold on the political machine and economic resources; nor is it necessary to emphasise the purely Communal line, even when it seems to coincide, at places, with economic divisions. The Hindu may, generally speaking, be a shop-keeper and money-lender; and the Muslim may, as roughly speaking, be an artisan or an agriculturist. But there are as many debtors among Hindus, even proportionately speaking, as among Muslims; and modern Industry is no absolute monopoly of either. The Hindu is, relatively speaking, perhaps richer in the aggregate, being more adaptable and more numerous. But the very fact of the larger numbers, as also of the greater adaptability to new ideas and new ways of living and working, make poverty none-the-less conspicuous or severe in the Hindu community. The real strength of Political Party sentiment will be developed only when the consciousness of India's grinding poverty deepens, and gets to be unmistakable even by the commonest intelligence. Side by side realisation must also come to the masses of the infinite possibility for betterment,—even immediate betterment,—by the use of political power, and the operation of a carefully planned National Economy, eliminating the private appropriation of Surplus Value, organising work scientifically, and distributing its product equitably, if not equally.

Ministries and the People at Large

Under these circumstances, the first Ministries in the Provinces, under the new regime, are likely to be of the same economic class, whether they wear the Congress label, or sport some other colours. Their

ability, even if they were minded to undertake economic reconstruction of a radical kind, is extremely circumscribed under the new Constitution, by the powers of the Governor, financial considerations, and the public services safeguards.

But, apart from this question of the reality of power available under the new Constitution to the chosen representatives of the people of India; apart from the ability of the Cabinet personnel in the several provinces; apart, finally, from the inherent fissures in some of the leading Provinces, like Bombay or Madras, which combine in one unit two or more distinct nationalities, between which there is smouldering a horrid flame of jealousy,—apart from all these handicaps, the new Ministries must labour under the most invisible but none-the-less potent drawback of an untutored mass, still unaware of its human rights, still unmindful of the economic possibilities of the country, and the social environment needed for their full exploitation.

The governing class, or Bourgeois Ministries,—even of Congress complexion,—would receive only that measure of popular support which is derived from the idols of the marketplace. They would dominate,—at least for the purpose of maintaining their position and power,—the educational and other machinery for publicity, so as to perpetuate respect for the existing order, and all that it stands for in regard to social justice. The Press, for example, which has been gagged in a number of ways by the existing regime of British imperialist exploitation,—and against which all Indian parties have protested, in one shape or another, at one time or another,—will hold its position in the future, only on condition that it continues to be subservient to the new

governing class, and promotes its interests, on pain of being visited with perhaps worse gags than have been used under the alien British regime. The British, violating such Civil Liberties, could at least be branded as unsympathetic outsiders. But when their example is followed by the Indian Ministers under the new Constitution, the chances of a true and full popular education through the Press into a correct perception of the rights and possibilities, open to the people in a truly democratic regime, would be progressively jeopardised.

Mission and Purpose of Political Parties

Political Parties in India have hitherto conceived their mission and purpose in a very restricted sphere. Their contact with the people is elementary; and their influence with the masses somewhat legendary. The mass in any country,—and particularly one situated as India—is necessarily below the level needed for social progress. But its weight and momentum cannot be overlooked in a democratic community by its leaders. Political leadership in India, especially that brand which is to provide effective ministerial timber for the future, needs improvement in two respects. Its own vision, its stock of knowledge, must be widened, not only as regards the world of ideas, but also in the more mundane concerns of daily administration of a great nation. Secondly, its perception of the dynamic energy, necessary to be supplied by the Leader, also requires to be deepened. The true leader is not merely a facile writer, a fluent speaker, an attractive figurehead. He may be all these, but must be more. He must be the prophet and the guide,—the master who informs, the

general who leads, the commander who executes the plans prepared by himself and his General Staff.

Contact with the masses must be direct and personal, no doubt. But that does not mean the complete identification with the average rut, if the country is at all to be uplifted. To be unknown and inaccessible would spell for political leaders lack of sympathy and failure to understand the people. But to seek to identify one-self entirely with the mass,—in thought and speech, in food and dress, in manners and ideals,—is particularly dangerous in a country like India, where such self-abnegation may easily wear the garb of personal sanctity and spiritual superiority that may only serve, —not to inspire or uplift, but to depress and repress the mass by a self-created complex of inferiority, a suicidal dose of facile resignation to Destiny. If the Leaders confine themselves ordinarily to contacts with the more intelligent and progressive elements,—commonly found in large aggregates of population in towns or industrial and commercial centres,—depending for actual contact with the masses on occasional tours, or the modern means of communicating the spoken word to the farthest corners of the land,—the task of leadership would be achieved much more effectively for the advancement of the country.

The main contacts of the leaders would necessarily be with the immediate colleagues, associates or followers. In Parliamentary institutions,—and the Indian National Congress is itself becoming more and more an enlarged edition of the National Council,—this would mean back-benchers, who may themselves be leaders in their own locality. So long as the exigencies of the Indian political struggle necessitated the Leaders and

ers being in common political exile, the distinc- . was immaterial. But when Indian politicians sense .iemselves to be nearer the goal of a Bourgeois capture of political power, and the possibilities of exploiting that power for personal aggrandisement become more manifest to the followers as well as to the leaders, the conduct of relations with the backbenchers would increasingly become a fine art. Followers would expect rewards for political service, suffering or sacrifice; and Leaders would have to find means of such rewards to a number of followers out of all keeping with the opportunities open to the leaders for offering such rewards.

Indirect Sources of Ministerial Influence

In this connection it should be noted, that the task of the British Government in India was easier compared to the task of the Indian leaders, when the latter acquire even the shadow of power open to them under the new Constitution. While the British Government, gathering to itself the richer, more powerful, more sophisticated elements, could satisfy them by mere nominal rewards,—like titles, badges, distinctions of no intrinsic value to the giver or to the receiver,—the bulk of the followers of the Indian Leaders in the new regime would have no other value except material. Hence, the only rewards they would insist upon would be chances of further exploitation of their own countrymen. Whether it is Fiscal Protection to large scale Industry, or modern business like Insurance or Banking; or petty contracts for printing, conveyance, or advertising, the reward for political service will necessarily take a shape resulting in some sort of exploitation of the country more than it need have

been. The British, of course, did not fail to exploit, through political power. But, inasmuch as the British have acquired a greater mastery of modern Industry, a longer experience of large scale commerce, they could conceal their exploitation by bringing in the process a degree of efficiency which showed increasing surplus, or at least made a show of increasing wealth, better wages to those Indians immediately engaged in the British enterprise. This compensated, in a manner of speaking, for such exploitation as they achieved. The efficient manager of industry in the competitive capitalist world always manages to pay better wages than the relatively inefficient, unprogressive, unambitious. If the British exploiter of Indian economic resources managed, being more efficient, to add to the wealth of the country, even while enriching himself in a much greater measure, those who accept the foundations of Capitalist civilisation cannot complain,—except that the fruits of British exploitation were drained away from this country for ever.

The Indian politician, rewarding his political followers in his day of power and ascendancy, will have no chance to adopt the "Spoils system." The authors of the new Act have taken good care that he should have no such temptation to lower the standard of administrative efficiency beyond the line compatible with the interests of the British "steel-frame". There are, also, no such avenues open to the Indian politician, as are available to his British confrére in power, *viz.*, enriching his followers at the expense of subject peoples,—Colonial Governorships, Judgeships, or overseas Military Commands. All the opportunity that the Indian politician in power will have to reward his followers, and to maintain their continued support in the

Legislature as well as in the country, is to be found in such patronage for employment, which, under the law and the Rules made for the purpose, is in the power of the Ministers, singly or in Council; and in those trends of policy which might provide the bigger figures in the economic world with larger and more numerous opportunities for exploiting the country.

In this process, there may result deterioration, waste, inefficiency. There is even a risk of incipient Fascist tendencies gathering force. But we cannot, for that reason, deny the necessity of political power to correct our own backwardness as a people. Self-Government we must have, even if, for a time, it might spell some of the drawbacks outlined above. At the most we may have to resign ourselves to a stage of transition, which must be accepted as inevitable, like Purgatory in the Christian cosmology. But even this sense of resignation before an inevitable decree of fate is not absolutely needed. We can, and easily may, provide alternative means to counteract this possibility by removing the very basis of such temptation, and consequent deterioration. If the motive of private profit is eliminated, the process of exploitation will carry no exclusive personal benefit. The Surplus Value created in every instance of material production should be reserved for the community as a whole, instead of being allowed to be distributed under the stress of individual competition in such manner as the competing individuals may devise for their own benefit. The salvation of India,—the hope of any social advance and economic betterment of the masses through *Swaraj*,—political control of the government machinery in the country,—lies only in a radical reorientation in

our conception of human motives, in our ideas of social good and common needs. Party Discipline, which would otherwise often be mistaken for tyranny of the bosses, as in America; Party strategy, which would likewise be liable to be confounded with Tammany Hall methods; Party loyalties, which might be another name for sycophancy or opportunism,—to which Politics has always been particularly prone,—will all stand a chance of purity and an ennobling aspect, if we could discard altogether the root evil of private profit through political power, or politicians' favouritism. The modern engine of public education and information, of shaping popular opinion even while informing it,—the Press and all its accessories of the Radio and the Screen,—will be redeemed from the besetting sin of capitalist countries,—its venality, corruption, degradation. It could be the preserver and upholder of Civil Liberties, since it would itself best benefit from the fullest prevalence of Civil Liberties. But while its owners and managers are susceptible to personal considerations of exclusive advantage, the power the Press naturally wields, in communities where Parliamentary institutions are supposed to prevail, is apt to degenerate into political blackmail for party purposes at best, or become frankly a weapon of class, if not group or individual, exploitation.

The People and the new Constitution

Parliamentary Democracy, of the type we are supposed to commence from 1937, associates people in the choice of their rulers only indirectly. Ministers are representatives of the people in a very indirect sense. Though their ultimate responsibility is to the people, they are primarily, immediately, or in the theory of the

law, responsible only to the Legislature, elected by the people under certain conditions, and at more or less considerable intervals of time. In India, these elections themselves make it doubtful if they would reflect correctly the real popular opinion on a given question, or at a given General Election. Even if the Elections faithfully reflect popular sentiment on a given issue, the special responsibilities imposed by law upon the Governor would make it impossible always, and in every Province, to select a Ministry itself representing faithfully the dominant sentiment in the Legislature. Under these conditions, the ideal of popular sovereignty,—of an appeal to popular choice, is no more than a name. If Ministers,—or leaders of political opinion in the country,—really wish to represent the popular sentiment in the governance of the country, they would have to bear a double responsibility; the obvious, immediate, constitutional responsibility to the Legislature and to the Governor; and the real, ultimate, political responsibility to the people they represent and profess to lead.

Future Role of National Congress

The latter is vague, indefinite, unwritten. It depends for its very existence on the good faith of the individuals, their loyalty to their constituents, and their genuine love of and for the country. The good faith of politicians, beset with so many temptations, must needs be weak or faltering, in a country where the people collectively have yet to develop consciousness of their political power, where they have yet to evolve conventions, which would keep their mandatories true to their mandate, where they have yet to devise a machinery for the popular trial, judgment, and punishment, of popular politicians. The Indian National Congress, if it

is maintained in its present role of fearless criticism of Government after the advent of full self-government in the country, may serve as a *forum populi* where the achievements of popular Ministries could be correctly evalued, and the mandatories of the popular will could if need be be arraigned as in a High Court of Popular Justice. But that body itself runs considerable risk of becoming a pocket borough of a clique, or the registry office of certain dominant personalities. Hence, if the pure flame of Parliamentary Democracy and free self-governing Commonwealth is to be lighted in this land, the forms and symbols of Constitutionalism, as provided in the Act of 1935, must be particularly guarded against, as they constitute so many pitfalls, traps, or snares for the unwary or the inexperienced, for the weak of faith and lacking in knowledge.

The real extent, then, of the power, authority, or influence of the popular Ministers in the new Constitution, cannot be even as much as their nominal, legal powers, as described in Section 49* which permits the executive authority of the Province to be exercised by the Governor on the advice of his Ministers, subject to the exceptions already noted.

It is clear that the embodiment of executive power and authority is the Governor, and not the Ministers. Nowhere are the Ministers mentioned as in any way conducting or sharing in the conduct of the executive governance of the country. Nowhere are they spoken of as being entitled, on behalf of the Popular Legislature, to superintend, direct, or control the administration of the country. Nowhere in the Constitution do

*See **ante** p. 78.

they even appear as formulating or guiding the national policy in administration. Their constitutional function is simply and solely to "aid and advise" the real *fons* and *origo* of the governmental power, executive authority, and political influence, *viz.*, the Governor. They may have to shoulder the blame if anything goes wrong in the sphere of administration on which they are entitled to aid and advise the Governor; but it may be doubted if they would be able to claim any credit for any good they do to the country. The British Cabinet of Ministers is not even known to the Constitution: and yet it has complete authority in the governance of the country. The Indian Council of Ministers is very specifically mentioned in the Constitution Act;—only to have its power, authority, or influence most narrowly circumscribed, if not completely denied.

Generally speaking, the authority of the Ministers covers only two classes of subjects: (*a*) those on which the Provincial Legislature is entitled to legislate; and (*b*) such other matters as may be assigned to them, under Rules made for the transaction of Government business by the Governor, and under such conditions as may be laid down in those Rules. In neither group is any substance of real power, authority or influence left to them.

It is equally clear that even such powers as are, or may have been, left to the Ministers may be transferred, delegated, or otherwise made over to officers subordinate to the Governor. Once such transfer, delegation, or divestment has been made, the Ministers will find it extremely difficult to restore to themselves the powers they have thus denuded themselves of. The

real function of the Ministers, as conceived in Section 50, is "*to aid and advice the Governor;*" and that, too, in regard only to such functions as do not fall within the scope of his exclusive discretion, or which are not incompatible with the exercise of his individual judgment. They will be unable to withhold supplies; for, as we shall see more clearly hereafter, that contingency has been more than amply provided for. The Governor has sufficient powers to procure funds for those acts of his which come within his discretionary authority, or in which he claims to exercise his individual judgment. However fully the Ministers may be supported by the local Legislature, the Governor can override them, and suffer no fall in consequence, so long as the constitutional methods only, as provided by the Act of 1935, are in vague.

CHAPTER V.

ADMINISTRATIVE MACHINERY IN THE PROVINCES

Public Services

Volume and Variety of Public Services

Having described the visible superstructure of the Provincial Government under the New Reforms, let us now consider the actual work of administration in the Provinces.

This is entrusted to the various Public Servants, who are divided, for the sake of convenience, into 1, All-India Service; 2 and 3, Central Service Class I and II; 4 and 5, Railway Service Class I and II; 6, Provincial Service; [Cp. Section 277 (1)]. Appointments to some of these are made by the Secretary of State; to others by the Governor-General or the Central Authority; to still others by the Railway authority; and by the Governor or Provincial authority.

Many, but not all, of these services are recruited on the advice of the several Public Services Commissions for the Federation and the Provinces. In a very few cases, like that of the Indian Civil Service proper, some of the first appointments are made according to the results of the public competitive examinations. But the vogue of the public competitive examination is distinctly on the wane; and, even in the Indian Civil Service, some appointments are now made otherwise than by an open competitive examination.

All-India Services consist of the Civil Service proper, the Indian Police Service, the Foreign Service,

the Service of Engineers, the Medical Service (Civil), certain branches of the Educational Service, the Agricultural Service, and the Veterinary Service. The Secretary of State has ceased to recruit—since 1924—under the recommendations of the Lee Commission to the following four services; namely, the Roads and Buildings Branch of the Service of Engineers, the Educational Service, the Agricultural Service, and the Veterinary Service.

According to the Report of the Joint Select Committee of Parliament, the personnel as well as the distribution as between Indians and Europeans, of these Services, amounted, on the 1st January 1933, as follows*:—

1.	2. Europeans	3. Indians	4. Total.
Civil Service	819	478	1,297
Police	505	152	665
Forest Service	203	96	299
Service of Engineers	304	292	596
Medical Service (Civil)	200	98	298
Educational Service	96	79	175
Agricultural Service	46	30	76
Veterinary Service	20	2	22
	2,193	1,227	3,428

* These figures do not indicate the amount of emoluments obtained by these two respective groups; but the probabilities are that the 60 p.c. of European officers absorb more than 80 p.c. of the salaries and emoluments in these offices. The following extract from the Budget speech of Sir George Schuster will help to give some idea of the costliness of the Public Services in India.

"Taking the Civil Departments (exclusive of Railways), the total pay of all the officials of Government, British and Indian, high paid and low paid, Central and Provincial, amounts to just under 57 crores. Of this sum, the Central Government's share is about 16 crores, and the Provincial

(Continued on page 158)

Provincial & Central Services

The Provincial Servants, that is to say, not including members of the All-India Services serving in the Provinces, work generally in each particular province without being transferred from Province to Province, or from Province to Centre. Generally speaking, they comprise the middle grades of posts in the entire Civil Administration of the country. Appointments to these Services are made by the Provincial Governments, who also regulate their conditions of service. The growing volume of provincial sentiment, in addition to the Communal, is reflected in the rules or conventions, whereby recruitment to these Services is beginning to be confined more and more to citizens of the same Province. It may not be a very healthy tendency from the standpoint of national solidarity; but in view of the immense volume of educated unemployment noticeable in each province, some such provision as this seems to be inevitable, however undesirable it may be.

As for the services under the charge of the Government of India,—the so-called Central Services,—they

(*Continued from page 157*)

Government's about 41 crores. This total is distributed between Gazetted officers on the one side, and what are called 'establishments' on the other. The term establishments covers . . . . all the clerical and lower paid staff. Roughly speaking, with a few exceptional cases, it may be said that this part of the staff includes posts with pay ranging to a maximum of about Rs. 500 per month. I may say incidentally that it includes all the police, and the irregular levies employed in Frontier defence, to which special considerations apply. Taking these together, the total cost . . . of officers British and Indian, Central and Provincial, all together and including leave pay, amounts to 16 crores, of which the Central Government's share is just under 4 crores, and the Provincial Governments' over 12. Incidentally, I may mention that out of this total, the cost of British officers amounts only to Rs. 6 1|2 crores.'' (Budget speech, 1930-31).

This, however, is a wider category than the Services mentioned above, which must be absorbing between them not more than 7 crores, taking the average pay etc. of these officers at Rs. 1,500|- per month. In these the highest services, the proportion of Europeans is still considerable, and of their emoluments yet more considerable.

comprise the Central Secretariat, the Railway Service, the Posts and Telegraph Service, and the Imperial Customs Service. A few of the appointments in these Services are made by the Secretary of State for India, but the large majority of these appointments are made by the Government of India.*

These services would account for another 20 crores at least by way of salaries &c. to officers. The Railways absorb a further 20 crores on the same account. This makes a total Salary Bill to superior officers of close upon 100 crores per annum, or over 30% of the aggregate public expenditure.

Problems of Public Services in India

At the time when the Government of India Bill of 1935 was before the Select Committee, and subsequently before Parliament, perhaps no other single subject attracted so much attention as that of the rights and safeguards of the Public Servants of India. Rightly or wrongly, a feeling had come to prevail in the minds of the Public Servants and their spokesmen in England that, under the new regime—with Ministers responsible to the Indian people, their rights and conditions of service as well as their salaries, pensions and emoluments, will not be maintained in tact; that they would be open to criticism in the local parliament as well as the popular press, without any adequate means of defending themselves. Their families and dependants, moreover, they felt, would be deprived of the comforts of their own economy, or the aid of such organization

*In these Services, no mention is made of the Defence Service, including Civil Officers and the clerical staff engaged in work relating to the Defence Services, either directly in the Departments of Defence or incidentally. cp. for these and other services under the Federal Government ch. VII of the **Federal Structure.**

as they may have built up for proper provision for such dependants.* The whole scheme of the Act seems, accordingly, to be motived by the desire to secure the fullest possible safety to the Public Servants of all grades, in all material particulars in which they can have the slightest reason to entertain any apprehensions about the future.

The rights of the Public Servants and the conditions of service enjoyed up to the coming into effect of the New Constitution are summarised in an appendix to this chapter as given in the Report of the Joint Select Committee of Parliament.

The problems in connection with the Public Servants in India may be classified, for our present purpose, into the following main categories:—

(*a*) Indianisation, *i.e.* replacement of the British element still maintained in the public services of India by the Indian element, with due regard to the requirements of qualifications and efficiency in

* Says the Report of the Joint Select Committee of Parliament, (para 274).

"The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration. The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service, staffed by persons capable of giving to successive Ministries advice based on long administrative experience, secure in their position during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide . . . . . . If, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal, and to co-operate with those who may be called upon to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them . . This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution but since in India the whole machinery of government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed into a reflection either upon his neighbours' integrity or his own."

the discharge of the duties entrusted to such officers;

(*b*) Recruitment to the public services, *i.e.,* the comparative advantages of open Competitive Examinations for making first appointments to the Public Service, and Patronage, or selection by certain specified authorities. In this will also be included the question of due representation to the Minorities in the Public Services.

(*c*) Pay, including the basic and standard scale of salaries in the several departments and grades of Public Service, the rules of promotion from grade to grade, and the consideration of the relative incidence of the prevailing scales upon the taxable capacity of the people.

(*d*) Allowances,—Leave, Personal, Travelling, Officiating, House, Exchange Compensation, and Local Allowances to individuals.

(*e*) Pensions, including superannuation or retiring Pensions, and Compensation for premature abolition of posts, or retirement from service before the due date.

(*f*) General matters of discipline, including procedure for making complaints by or against Public Servants, hearing and disposal of the same, as well as of punishment impossible in regard thereto—

Before considering generally these problems, let us set out the scheme of the Act, as contained in Sections 240 to 277, leaving out Sections 232—239, relating to the Defence Services, as not pertaining to the present part of the study of the new Constitution.

Tenure of Office

By Section 240, certain points are made clear beyond the possibility of a doubt: (1) All people in the

Civil Service, or who hold civil posts under the Crown in India, **hold office during His Majesty's pleasure.** This is irrespective of the authority appointing, or the place of service.

The doctrine of tenure of office during His Majesty's pleasure, strictly interpreted, would, of course, mean that any public servant is liable to be removed at any time from his post, and his service dispensed with. Such a strict interpretation, however, is utterly impossible under the sections that follow. The only possible meaning of this provision, therefore, is: that it is intended to give a greater security than ever to the Public Servant in India. His Majesty can never act constitutionally, except on the advice of his Ministers; and his representatives in India, the Governor-General and Provincial Governors, must follow the same practice, except where otherwise authorised by law. The sections which follow vest so many extraordinary powers in these His Majesty's representatives in India that the constitutional doctrine mentioned above has no real significance, so far as any policy of effecting economy or Indianisation in the public service in India is concerned.

(2) None of these persons can be dismissed from the Service of the Crown, except by an authority which is equal to the authority that made the first appointment.

(3) Neither dismissal nor reduction in rank can be made, unless proper opportunity is given to the person concerned to make his defence, or show cause why the proposed action should not be taken against him.

To this last there are two exceptions, namely:

(i) A person may be dismissed or reduced in rank on the ground that he is guilty of conduct which has led to his conviction on a criminal charge; and

(ii) If the Authority entitled to dismiss or reduce such a person in rank is satisfied, for reasons recorded in writing by that authority, that it is not possible to give the person the opportunity to defend himself as required above, the above provisions may be dispensed with.

Even if a person holds a civil post under the Crown in India during the pleasure of His Majesty, a special contract may be made with a person who is not a member of the Civil Service of the Crown in India. If such a contract is terminated before the expiration of that period, or if the post is abolished, the public servant affected must be compensated on being required to vacate his post. In other words, the condition that the employment is during the pleasure of His Majesty will not defeat the provision of a specific contract, under which compensation is payable under any such contingency as mentioned above. This rather onerous obligation placed upon the Crown as an employer may be assumed to be inspired by the principle that the terms of public employment should be as liberal as possible. Reasons of national economy, or of public discipline and propriety, will not, under this section, be allowed to obviate the right to compensation, even if the services of an officer are dispensed with on grounds which are to be found in the Inchcape Report, or such as those which insensed the whole Indian people against Gen. Dyer. The officer has a right to a proper

trial or defence, except in cases where, for obvious reasons, such a privilege cannot be allowed.

Recruitment

Section 241 provides for recruitment for the service of the Federation or of the Provinces. So far as the Federal services, or posts in connection with the affairs of the Federation, are concerned, appointments are to be made by the Governor-General, or by such person as may be directed by him to do so.

Secondly, so far as the Provincial Services, or posts in connection with the affairs of the provinces are concerned, appointments are to be made by the Governor, or by such person as may be directed by the Governor in that behalf.

Conditions of Service

The conditions of service in a civil capacity must be prescribed by the Governor-General, under Rules made for the purpose, so far as persons serving in connection with the affairs of the Federation are concerned; and by the Provincial Governors, in so far as persons serving in connection with the Provincial affairs are concerned. These Rules will, however, not apply to regulate the conditions of service of those persons who are employed temporarily on the distinct understanding that their employment may be terminated at one month's notice or less. The Rules must be so framed that, so far as persons serving in a civil capacity before the coming into effect of the Provincial Autonomy's portions of the Act of 1935 are concerned, no order, which would alter any rule, or interpret to his disadvantage any rule regulating the conditions of

service of an officer, could be made, except by the authority which, on the 8th of March 1926, was competent to make such an order; or by some person empowered in this behalf, by the Secretary of State.

This will effectively prevent the new Provincial Governments from regulating the conditions of service, whether with a view to economy or retrenchment, unless specially empowered in that behalf by the Secretary of State, or unless in regard to such posts for which they were entitled to make such regulations. Even if any rules are made which would alter the conditions of service, or which would be interpreted to the disadvantage of the Public Servant concerned, an ample right of appeal is provided to any such aggrieved person against: (i) any order which punishes or formally censures him, or (ii) which alters or interprets to his disadvantage any rule by which his service is regulated, (iii) or terminates his appointment otherwise than before the completion of the age fixed for superannuation. Those persons in the service of the Crown in a civil capacity, whose rights were not similarly regulated or provided for before 1926, are also granted, by section 241 (3) (c), the right of at least one appeal against any such order, except and unless the order is made by the Governor-General or by the Governor.

Provincial Legislatures and Public Services

Subject to these statutory restrictions, provincial Legislatures are entitled by the Act of 1935* to regulate the conditions of service of persons serving the Crown in a civil capacity in the Province. Any rules made for this purpose would necessarily be subject to the legis-

*Sec. 241 (4).

lation passed by the appropriate Indian Legislature. But the legislation so passed would not be allowed to have any effect, if it is calculated to deprive any person of any right of appeal against particular orders, as provided for above. The opportunity thus left to the Provincial Governments to regulate the discipline &c., of the public servants under them is thus extremely slender and circumscribed.*

Above all Rules regulating the conditions of service, and above all Acts of the Indian Legislatures, stands the power of the Governor-General, or of the Governor, to deal with cases of any person serving the Crown in a civil capacity in India in such a manner as may appear to those officers to be just or equitable. But even they cannot deal with any case less favourable to the public servant concerned than would be the case under a Rule of service, or an Act of the Legislature regulating the conditions of service.† This secures the position of the Public Servant against any arbitrary or partisan action, either of the Executive in India, or even of the Legislature.

Police Service

Section 243 requires, notwithstanding anything in the other provisions of the Act, that the conditions of service in the Police force are to be determined by Acts relating to such Force in the several Provinces.

Judicial Services

As regards certain posts in the provincial High Courts, in making appointments to the staff of these High Courts, the place of the Governor is to be taken by the Chief Justice of each High Court, so far as making Rules for recruitment to these Services, or

*Sec. 241 (4).
†Sec. 241 (5).

regulating their conditions of service, are concerned. The Governor is, however, allowed, in his discretion, to require that, in a list of cases prepared by him at his discretion where the High Court is concerned, no person, not already attached to the Court, shall be appointed to any office connected with the Court, except after consultation with the Provincial Public Service Commission. Rules made by a Chief Justice, in so far as they regulate the salaries, allowances, leave or pensions of these Judicial Officers, must be approved by the Governor.

As regards District Judges etc.;* in a Province, the Governor, exercising his individual judgment, makes these appointments from recommendations, made, presumably, by the Minister in charge. But no such recommendation can be made except after consultation with the High Court (not the chief justice only).† These posts may be filled by: (i) persons already in the service of the Crown, *i.e.*, by promotion, or from the Civil Service; or (ii) members of the Bar recommended for the purpose by the High Court, and having a standing of at least 5 years as practitioners.

For the subordinate Civil Judicial Service, the Governor makes Rules defining the standard of qualifications expected of persons seeking to enter that service after consultation with the Public Service Commission for the province, and with the High Court. He may even direct that a public examination be held by the Provincial Public Service Commission to secure properly qualified candidates for such posts. Appointments will then be made from the successful candidates at such examinations, or in accordance with the

*Sec. 253 (4).
†Sec. 253 (1).

Regulations. Subsequent promotion, *etc.*, within this service is entrusted to the High Court.

Rights Reserved to the Secretary of State for India

The Secretary of State retains the right, from and after the commencement of the new Constitution in the Provinces, to make appointments to the Indian Civil Service, to the Indian Medical Service (Civil), and the Indian Police Service, unless and until Parliament otherwise orders.* Besides this, he is further entitled to make appointments *to any Service or Services*, which, at any time after the coming into operation of Provincial Autonomy, he thinks necessary to establish for the purpose of securing recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General, which the latter is required to exercise in his discretion.† This means that, in addition to the three main Services,—Civil, Medical, and Police,—the Secretary of State has the right, until Parliament otherwise orders, to **institute additional regular Services,** to determine their strength, and to reserve appointments to the same in his own hands, provided that these Services relate to such functions which the Governor-General is required to exercise in his discretion. The three Departments of Defence, Foreign Affairs and Ecclesiastical Affairs are excluded completely from the scope of the Federal Ministry; and the Governor-General exercises all his functions in relation to these in his discretion. There is besides a vast additional field in other matters in which the Governor-General is by law entitled to act in his discretion, an account of which is given in the volume on Federal Structure.

*Sec. 244 (1).

†Sec. 244 (2) cp. **Federal Structure,** ch. VII.

The Secretary of State may also make appointments in connection with the Irrigation Department (245).

The withdrawal of such large numbers of important appointments from the jurisdiction of the Indian authorities must necessarily react on the prestige of the latter, which can bode no good to the general efficiency of the administration.

The cost, also, of such Public Services filled by an outside authority is liable to be increased at the option of the Secretary of State to an almost indefinite extent. For, it is the Rules made by Secretary of State from time to time, which prescribe the scale of pay, leave, pensions and medical attendance,* and the Secretary of State would frame those scales and rules according to the standards he is familiar with which are much higher than India can bear. Promotion, leave of not less than three months, or suspension order with respect to any such officer, can only be made by the Governor exercising his individual judgment, and no portion of the pay of an officer suspended can be docketed except to the extent ordered by the Governor in his discretion.

Reserved Posts

The Secretary of State is entitled by law† to make rules laying down the character, and number of the Civil posts under the Crown which are to be filled by persons appointed by him—other than posts in connection with the discretionary functions of the Governor-General.

*Sec. 247 1 (a).

†Section 246 (1).

No such posts, moreover, can, without the previous sanction of the Secretary of State, be kept vacant for more than three months, or be filled otherwise than by the appointment of a person qualified as above, or be held jointly with any other post.* The promotions and posting of these *reserved posts*, shall be made by the Governor-General exercising his individual judgment, so far as the posts in connection with the Federation are concerned, and by the Governor exercising his individual judgment, so far as the posts in connection with the provinces are concerned.†

Rules re: Conditions of Service of Such Officers

The Rules thus made must be submitted to each House of Parliament as soon as they are made. If either House of Parliament resolves, within the next 28 days after the submission of these Rules, that the Rules shall be annulled, these Rules or any of them shall be void.‡ But nothing done under such Rules, until they are declared annulled, will be prejudiced or rendered invalid by a Resolution of the House of Parliament.

The Secretary of State is entitled, under Section 247, (1), to make rules regulating the conditions of service of persons appointed by him to a civil service or to a civil post, as regards (1) pay, (2) leave, (3) pensions, (4) general rights in regard to medical attendance.

Rules by the Governor-General or by the Governor

On other matters affecting the conditions of service of such officers, the Secretary of State may make Rules

*Sec. 246 (1).
†Sec. 246 (2).
‡Sec. 246 (3).

if he thinks so proper. But if no such rules are made by the Secretary of State, the Governor-General may make rules in their behalf so far as persons serving in connection with the affairs of the Federation are concerned, and the Governor of a province so far as persons serving in connection with the affairs of a province are concerned. No such rule made by the Governor-General or a Governor would be in effect, if it gives to any such officer terms less favourable in regard to his remuneration or pension, than were allowed to such a person on the date on which he first joined service under the rules then in force.

The salary and allowances of all such officers are to be *charged on the revenues* of the province,* if they are serving in connection with the affairs of a province† This means that these salaries and allowances will not be subject to the vote of the Federal or Provincial Legislature.

All pensions payable to or in respect of any such person, and Government contributions to any pension or provident fund on account of only such person, must also be *charged on the revenues of the Federation*, *i.e.*, be non-votable by the Federal Assembly.‡

This means that the Pension of any person, and the contribution in respect of the Pension or Provident Fund by the Government, is to be borne by the Federal Budget, irrespective of the fact of the service whether under the Federation or under the province. The Federation and the Province may subsequently arrange among themselves, *pro rata* according to the amount of service rendered under the Province or under the

*Cp. Sec. 79 and 34, and below p. 275.
†Sec. 247 (4).
‡Sec. 247 (5).

Federation, the proportions to be borne by the respective Provincial or Federal budgets. But so far as the pensioners or the beneficiaries of Provident Funds are concerned, they are entitled to look to the Federal Government to meet their charges in this regard.*

No reduction in the maximum pension is allowed to persons in this category, by any Rule made under this section, except in each case with the consent of the Secretary of State.†

Powers of Appeal

The appellate power of the Secretary of State seems to be reserved by sections 247 and 248 (3).

So far as persons appointed by the Secretary of State to a Civil Service or civil post in India are concerned, the right of complaint is duly provided for, in the first instance, to the person who made such order. If no redress is obtained from such persons, a further appeal lies to the Governor-General, if he is serving in connection with the Federal affairs, and to the Governor, if he is serving in connection with the Provincial affairs. The Governor is also required, by 248 (1), to examine personally into the complaint, and order such action to be taken thereon as appears to him, *exercising his individual judgment*, to be just and equitable. No order which censures or otherwise punishes any officer in this category, or affects unfavourably his emoluments, pension rights, or decides against him the subject matter of any memorial, shall be made, except by the Governor, if the officer is serving in connection

*These pensions, it may be added here, are exempt from any taxation on income by the Federal or Provincial governments, under section 272. See ante p. 190.

†Sec. 247 (6).

with the affairs of the Province,—exercising his individual judgment.

Any sum ordered to be paid to any such person by the Secretary of State as the result of an appeal must be *charged upon the revenues of the Federation or of the Province* as the case may be; that is to say, be not subject to the vote of the Federal or Provincial Legislature, under section 248 (4).

Other Disciplinary Powers, and Service Privileges

Even under the exercise of powers given to the authorities in India, if any step is taken or policy adopted, which would prejudicially affect the conditions of service of any person appointed to a civil service or to a civil post by the Secretary of State, such persons or their representatives are entitled, under section 249 (1), to receive from the revenues of the Federation, or those of the Province, as the Secretary of State may direct, such compensation as he may consider just and equitable. The same principle applies to any deterioration in the condition of service or any other reason, which the Secretary of State deems such as to entitle the person suffering to compensation. All such compensatory payments are to be *charged on the revenues* of the Federation, or of the Province as the case may be, according as the person concerned has been serving the Federation or a Province.

Additional Burdens upon India

Hard as these provisions are upon the people of India, Section 249 (3) expressly provides, in order to remove the slightest possibility of doubt:

> "that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or,

as the case may be, the Governor from the revenues of the Federation or a Province, by way of compensation, to persons who are serving or have served to His Majesty in India, in cases to which these provisions do not apply."

All the foregoing rules, regulations or statutory provisions are made, by Section 250, to apply to all persons appointed before the commencement of Part III of the Act of 1935, by the Secretary of State in Council, to a civil service or a civil post in India. The same rules, regulations and statutory provisions also apply, with such exceptions and modifications as the Secretary of State may decide, to any person, who, without being appointed to a civil service or a civil post by the Secretary of State, holds or has held a reserved post; or any civil post under the Crown in India, and is or was when appointed to such a post, an officer in His Majesty's Forces. This extends the benefit of all the foregoing provisions to Army officers lent to the civil side of the administration.

No Reduction in Posts or Emoluments

As though the protection, security and safeguards assured to the Public Service in India in all the foregoing provisions were not enough, it is provided, by Section 258, that no post which was in existence before the coming into effect of Part III of this Act, and was held by a member of the Central Service Class I or II, or the Railway Service Class I or II, or a Provincial Service, can be abolished, if, the abolition would adversely affect any such person. Economy by abolition of costly posts in public services can, under this Rule, be made only when all the present incumbents—or claimants—to these privileged posts have retired from the service.

There is an exception to this provision of the Act. In the case of any such posts in connection with the affairs of a Province, the Governor, exercising his individual judgment, may abolish it. But, inasmuch as the Governor exercising his individual judgment is not bound to follow the advice of his Ministers, even if the Ministers are unanimous in their resolve to abolish particular posts in the services mentioned above, no object of economy, or retrenchment or re-organisation of such services is likely to be served by this exception.

By parity of reasoning, no rule or order, which would adversely affect the pay, allowances or pensions of any person appointed to Central Service Class I or Railway Service Class I, before the coming into operation of Part X of the Act (relating to the Services under the Crown in India), nor any order upon a memorial submitted by any such person, can be made, except in the case of persons serving in connection with Provincial affairs, by the Governor of the Province, exercising his individual judgment. Further, the salary and allowances of persons appointed before April 1st 1924, by any other Authority than the Secretary of State, to a service or a post which, at any time between 1st April 1924, and the coming into operation of Part X of this Act of 1935, was classified as a Superior Service or Post, must be *charged on the revenues of the* Province, if he is serving in connection with the affairs of the Province; that is to say, no such salary is open to the vote of the Legislature concerned.*

Pensions

The Pensions and contributions towards the Provident Fund of such persons are also to be

*Sec. 258 and 259

similarly *charged on the* revenues of the Federation. A similar Rule applies to the Pensions of those retired from any such service or post before 1st April, 1924. Section 260 provides that the Pension of people who are retired from the civil service, or from a civil post under the Crown in India, before the coming into operation of Part III of the Act of 1935, shall be charged upon the provincial revenues; for the same would have been payable by the Local Government in any province, if this Act had not been passed. In all other cases, these shall be paid out of the revenues of the Federation.*

All the powers of the Secretary of State in this connection are to be exercised by the Secretary of State with the concurrence of his Advisers.†

Public Service Commissions

Though practically all the accepted principles of securing a healthy, efficient, and really independent Public Service in India have been abandoned by the Act of 1935,—so far as the *de facto*, or rather the *de jure* governments in India are concerned; though recruitment by open competitive examination is a rapidly vanishing quantity in a majority of Public Services, and the powers of discipline or economy of the authorities in India less than nominal, they still maintain the pretext of recruitment through independent Public Service Commissions.

In Chapter III of Part X of the Act of 1935, provision is made for the appointment of Public Service Commissions, for the Federation, as well as for such Provinces as may desire to have this device for recruit-

*Sec. 260.
†Sec. 261.

ing to the several services under their charge.* Though the Act requires a Public Service Commission for each Province,† it also provides that two or more Provinces may agree to have a Common Public Service Commission, and that the Public Service Commission of one Province may serve the needs of any other Provinces agreeing to such an arrangement. Any agreement for this purpose must specify, wherever one Commission is to serve the purposes of more than one Province, as to which Governor or Governors will exercise those functions in connection with the services, which are, under Part X of the Act, required to be exercised by the Governor of a Province.‡

The Federal Public Service Commission may, if requested so to do by the Governor of a Province, agree to serve the needs of a particular Province, if the Governor-General approves of such a course.¶

Constitution

A Provincial Public Service Commission consists of a Chairman and such other members as are appointed by the Governor *in his discretion*.§ No qualifications have been laid down for membership of this body, except that at least one half of its members must have served the Crown in India for at least 10 years on the date of their appointment. This means that the bulk of such Commissions shall be made up of persons who are replete with Service prejudices, and from whom, therefore, no sympathy with popular ideas or ideals of democratic government can be expected.**

*Sec. 264 (1).
†Sec. 264 (1).
‡Sec. 264 (2).
¶ Sec. 264 (3).
§Sec. 265 (1).
**Ibid.

The Governor *in his discretion*, makes regulations to govern the provincial commission, on the following matters:—

(*a*) The number of members of the Commission, their tenure of office, and their conditions of service.

(*b*) the staff of the Commission and their conditions of service.*

The Chairman of the Federal Public Service Commission is ineligible for further employment under the Crown in India, when he ceases to hold the chair of the Commission.† On the other hand, the Chairman of a Provincial Commission is eligible for appointment as the Chairman or member of the Federal Commission, or as Chairman of another Provincial Commission, but not for any other employment under the Crown in India.‡ This, however, would not prevent any of these persons, disqualified from further employment under the Crown in India, from being employed in the Indian States, or semi-Governmental bodies like the leading Municipaliites, Port Trusts or Universities, not to mention the far more lucrative openings in modern capitalist industry. If the idea underlying such a bar on employment is to ensure the integrity and independence of such persons in the choice of candidates selected by them for public employment, the growing modern practice of transition of high public officers into private industry ought to be put to an end to. Scandals like that which recently occurred in connection with a high official of the British Air Ministry will be only too common in the relatively laxer atmosphere in India, if a specific guarantee is not obtained from

*Sec. 265 (2).
†Sec. 265 3 (a).
‡Sec. 265 3 (b).

any officer serving in given positions of particular importance, not to seek private employment when he retires from public service, on pain of losing his pension, and suffering such other penalties as the Rules made in that behalf may ordain. Other Members of the Federal or Provincial Commission are not eligible for any other appointment under the Crown in India, without the approval of the Governor in the case of an appointment in connection with the affairs of a Province, or of the Governor-General in the case of any other appointment. The action of the Governor in this connection is to be in his discretion.*

Duties

The duties of the Federal and Provincial Public Service Commissions are laid out, in *section* 266 as follows:—

(1) To conduct examinations for appointments to the service of the Federation and the Provinces respectively.

(2) If requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor *in his discretion* as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters, on which,

*Sec. 265 c.

either generally, or in any particular class of case, or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. But, subject to regulations so made, and to the provisions of the next succeeding sub-section, the Federal Commission or, as the case may be, the Provincial Commission *shall be consulted*:—

(*a*) on all matters relating to methods of recruitment to Civil Services and for civil posts;

(*b*) on the principles to be followed in making appointments to Civil Services and posts, in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters, including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;

(*e*) on any claim for the award of compensation in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them, and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor *in his discretion*, may refer to them.

Public Service Commissions are not entitled to be consulted on the manner in which appointments

and posts are to be allocated as between the various Communities in the Federation or a Province, or, in the case of the subordinate ranks of the various Police forces in India, as respects, any of the matters mentioned in paragraphs (*a*), (*b*) and (c) of sub-section (3) of section 266. These are matters in general policy which can only be settled by the supreme authority.

These duties are mainly advisory, except as regards the Examinations, which are to be conducted by these Commissions for appointment to public service. But it is not certain that on the results of the Examinations conducted by these Commissions, the successful candidates in the order of merit will necessarily and automatically appointed to the vacancies announced or available.

The real role of the P. S. Commission

The interposition of such a body,—even if only by way of consultation—on matters relating to methods of recruitment, principles of appointment, promotion and transfer, as also all disciplinary matters, is a needless and unjustifiable check on the Ministers, that, in the conditions of India, will not promote the interests of administrative efficiency or smooth government. The Commission have got no executive functions of their own; but they have enough statutory privileges of their own to embarrass or impede, without aiding, the Constitutional Ministers.

Extension of Commission's Functions

The functions of the Public Service Commission may be extended, under section 267, by Act of the Federal Legislature cr the Provincial Legislature,

which may provide for the exercise of additional functions by these Commissions.

But—

(a) no Bill or amendment for that purpose can be introduced or moved without the previous sanction of the Governor-General, or of the Governor *in his discretion*.

Besides,

(b) it must be a term of every such Act that the functions conferred by it must not be exercised—

(i) in relation to any person appointed to a service or a post by the Secretary of State, or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State.

(ii) Where the Act is a Provincial Act, these functions must not be exercised in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

It is impossible to see in what directions can the functions of these Commissions be added to, by such legislation, without at the same time diminishing what little authority still remains in the Legislature, *e.g.*, by way of voting supplies.

The expenses of the Public Services Commission, including the salaries, allowances and pensions payable to members of the staff of the Commsision, are to be charged upon the revenues of the provinces, and so be outside the authority of the local Legislature to vote upon.*

*268. Pensions, however, to members of the Commission, &c., are not to be charged on Provincial revenues, being already made a charge upon the Federal revenues under section 247(5) and 250.

Absolutely Guaranteed Position

We have outlined above the several provisions relating to the constitutional position and safeguards of the Public Servants in India, in order to make our general criticism of the whole scheme more objective and documented, and incidentally to show the actual scope left to the Ministers to influence the administration of the country in its daily routine. Of the half dozen problems connected with the Public Services in India, those in regard to salary, pensions, and other allowances affect the economic ability of the Indian people; while those in regard to recruitment, discipline and Indianisation affect the political sentiment for Self-Government which is reinforced by economic considerations. We shall consider them in these two main groups.

The public servants are all so thoroughly guaranteed their tenure of office, emoluments, and other privileges, that any kind of material sanction, which the power to affect the position of any public servant by the Government as a whole, or the official superior, namely, the Minister in charge of a Department, implies, is extremely insignificant. Even the right of posting, transfers from one post to another, or promotion from a lower to a higher grade or post, is so meticuolously regulated by Law, or Rules to be made by the Chief Executive Authorities, that the influence of the popular chiefs of government in controlling the public servants under their official charge, is reduced to nullity.

British Analogy

It is urged, indeed, that the provisions of the Act of 1935 are following, in essence, the practice developed in the United Kingdom, in which the Public Servants of the Crown are assured the independence and safety, which no Minister of the Crown can really tamper with. The Prime Minister is supposed to be personally in charge of the question of the appointment, promotions, and discipline of the public servants in the several Departments; and as such, he is able to secure to them that measure of safety, which in India is accorded to them by the provisions of the Constitution Act.*

But the British analogy has no place, not only because the sovereignty of Parliament is absolute, while the Indian Legislatures have no right to legislate on such matters; but also because the traditions of

*"This tendency has been emphasised by the argument frequently advanced and accepted in the past, both by Indians and Englishmen, that provincial self-government necessarily entails control by the provincial government over the appointment of its servants. This argument has, no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, the civil servants are the servants of the Crown, and that the Legislature should have no control over their appoint or promotion, and only a very general control over their conditions of service. Indeed, even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister, as, so to speak, the personal adviser to the Crown in regard to all Service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India Services. But, whatever misunderstandings may have arisen in the past as to the real status of the Provincial services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, i.e., directly from same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services, will, therefore, be essentially Crown Services." (Para. 291 Joint Select Committee's Report. Page 179).

public service, in India and in Britain, and the entire outlook of public servants, is so fundamentally different.

Services and Ministers

One effect of these provisions must inevitably be to make the constitutional chiefs of the administrative Departments of Government in the Provinces utterly impotent to control their subordinates in the Public Service, and to secure that the policy they have adopted through the Legislature is carried out. In the United Kingdom this never happens, simply because of the traditions of loyalty, which makes all Public Servants of the Crown render to each successive Government, no matter to what Party it belongs, the same measure of support and co-operation that is expected of the Public Servants in carrying out the wishes of Parliament, embodied in legislation. In India, however, the opposition of the existing services to constitutional progress on democratic lines is no secret. It is reasonable to suppose, therefore, that the new popular Ministries will be looked upon with a degree of distrust by the higher ranks of the Public Servants in India, which would not augur well for the smoothness, harmony, and progressive character of public administration.

It is, therefore, reasonable to fear that these officials may not show the same co-operation that is expected of the public servants in a parliamentary democracy. During the transition period, accordingly, the need seems to us to be imperative, that, in the last resort at any rate, the official control of the Provincial Cabinet should be secured over the Public Ser-

vants serving in the Province, no matter by whom they have been initially appointed, if the effect of Provincial Autonomy is to have any real meaning in the governance of the provinces.

Service Discipline and Administrative Efficiency

It is needless to labour upon the subversive influence of those innumerable measures of safety, which are found in the many provisions for aggrieved public servants to complain against any decision of a superior authority affecting them, and also to appeal against the same to a higher authority. Such opportunities for securing justice to the public servant, even if needed, must be consistent with the maintenance of discipline in the ranks, and of the ultimate sovereignty of the people,—and, therefore, of the supreme authority of their chosen representatives,—in a democratic Constitution. The actual manner, in which such opportunities are provided by the Act of 1935 to the various grades of Public Servants in India, suggests, even if they do not express in so many words, the possibility of indiscipline or insubordination, which will not bode well for the continued efficiency of public administration in this country. The public services in such entrenched and privileged position will always be looked upon as mere exploiters, who had no concern with the good of the country they administer, except to squeeze out the last ounce of wealth needed to pay their inflated and innumerable salaries, allowances and emoluments. The very objective these provisions are intended to achieve will thus be defeated by making them appear as an alien garrison in this country.

High scales of pay and innumerable allowances

It may be admitted that the power of supreme and ultimate control in the hands of the popular Ministers over their official subordinates need not necessarily be exercisable in a manner which would prejudice or adversely affect the public servants. But the public servants' claim to fairness of treatment must not be confounded with that desire of riveting vested interests of a clique or a class, which will not tolerate the slightest modification of their excessive and insupportable privileges. Without mentioning the innumerable and bewildering classes of allowances to public servants,—which operate, individually and collectively, as so many opportunities for exploiting the exchequer or the tax-payer,—the present scales of pay, leave, pension, and other emoluments allowed to the Public Servants in India, are, it is notorious, the result of past history, and not of any economic valuation. The British Servant in the employ of the East India Company, and subsequently of the Crown, was given his pay, *etc.*, not simply and solely in return for the work he did in India, but also as a measure of insurance against temptation to abuse the position he held. Perhaps in part it was also a kind of indemnity for having left his own country, friends, and relatives, in order to serve in India. The two latter factors in regulating the scales of pay, pension, *etc.*, of the public servants in India, ought not, under modern conditions, to influence the supreme authority, as they evidently seem to have done in the foregoing provisions. No economy in the cost of administration would be possible, no measure of real social reform feasible, unless this unbearably heavy burden on the Indian

Tax-payer is relieved. The aggregate salary bill of the superior officers of the Indian Governments in all departments amounts to over 100 crores. A graduated reduction from 10% on the lowest to 50% on the highest of these salaries, and a radical overhaul and economy in the innumerable allowances and pensionary charges, could easily make a saving of some 20 crores a year, which could make up for all the leeway in education and sanitation that the country so badly needs.

Not only are Indians of like qualifications now available in as large a number as may be desired; but also it must be remembered that means of communication and transport have improved so enormously, in the last generation or two, that much of the argument for an indemnity to the foreign Public Servant serving in India has now no significance whatsoever. And any claim to insurance against bribery and corruption of any sort in the higher branches of the Public Service must be sternly discountenanced, if only because it implies an insult to the many officials who can remain honest in the midst of temptations, without any help from high salaries, &c.

The admitted poverty, moreover, of the Indian people, and their inability to bear such burdens as the disproportionately high salaries and allowances paid to the public servants in India constitute, is a factor which every popular Ministry must consider, if it is at all to translate into practice, and in terms of real welfare to the people, the meaning of Provincial Autonomy. In so far, therefore, as the popular Ministries are precluded, by law, from making any attempt

at revising the scales of salaries, allowances, *etc*., of the public servants in India, the constitution inflicts an injury, not only on the *amour proper* of the Ministers, but also upon the possibility of any material advance of the provincial peoples.

Modes of Recruitment.

The statutory provisions outlined above, regarding the recruitment, discipline, and retirement of the Public Servants, are further open to criticism, inasmuch as the salutary principle of appointing, in the first instance, all public servants according to the results of the Competitive Examinations in the civil departments is abandoned. By abandoning this method, not only is it easier to keep out qualified Indians getting into such services without any favouritism. It is also easier to keep out the less desirable non-Indians from these close preserves of the British steel frame in India. The necessity to assure a certain guaranteed proportion of appointments in the service of the country to the members of given Minorities could, if need be, be easily reconciled with the general acceptance of the principle of recruitment by open Competitive Examinations, by reserving a given proportion of seats exclusively to members of specified Minorities appearing at such examinations. Instead, however, on the ground that the Minority Communities would otherwise not obtain their share of the appointments in the Public Service, the powers that be have, of late years, given greater and greater prominence to the objectionable principle of patronage in making such appointments. The latest Constitutional Act confirms or sanctifies this unwelcome change. Without the

slightest desire to question the established rights of Minorities in such matters, it may yet be said that the self-respect of the Minorities themselves should require, that this type of invidious spoon-feeding, casting upon them the permanent stigma of incompetence to satisfy any reasonable tests of efficiency or qualification, be immediately dispensed with. The Minorities have every right to be patriotic, and concerned in the continued efficiency of the Public Service of their country. They have every right to demand that they should be given the same opportunities to serve the country as their brethren of the majority communities. We might even concede that the admitted lag in modern education, from which certain Minorities are suffering, demands, in simple justice, a compensation or special protection, which could be assured to them by reserving at open examinations certain seats for them. But when all such concessions have been made, we must not overlook the paramount demands of the purity and efficiency of the country's public services, which the relaxation of the principle of recruitment by examination involves.

Concurrently with this principle of recruitment through open competitive examination was another healthy principle of regulating the Public Service in India, *viz.*, the exclusive right of the authorities in India to decide upon and order the subsequent promotion of a public servant in India after he had been once appointed. That, too, has now been practically abandoned.

These provisions are, in reality, intended only to safeguard the interests of the British Public Servants

in India. But, by parity of reasoning, the Indian Public Servants, would necessarily claim equality of treatment. It is the thin edge of the wedge to widen the scope for the principle of patronage, ultimately leading to invasion by the "spoils" system in appointments to the Public Services in India. Nothing can be more disastrous than the adoption of that system in the government of India. Hence, in so far as the ideals of the independence, integrity, and efficiency of the public servants are at all accepted by the authors of the new Constitution, it must be said that the indirect result, at any rate, of the various provisions they have included in the Act of 1935, would be to pave the way to deterioration in the calibre of Public Service through the spoils system. The administrative standards are bound to be affected by the inclusion of such elements in the Public Service as would owe their place, not to proved or tried merit, but to the accident of being born in a given Community, or to that of the favour of a particular Authority. For well nigh a hundred years, the actual administration in England has called forth the admiration of all foreign students of the British system, simply because appointments to the Public Service are there made on the basis of Competitive Examinations. If in India the clock is now to be put back a hundred years,—the competitive examinations were first introduced, so far as the Indian Civil Services were concerned, somewhere about 1853,—the Indian student of the new constitutional machinery cannot but voice his apprehension that the prospects of administrative efficiency and public integrity in India, in the next decade or more, appear to be very gloomy.

Indianisation

As for the main problem of the Public Services in India, it is, in its essence, an indispensable ingredient of real self-government. Indians must have the right and opportunity to administer their own affairs. Only when Indians of the necessary experience or skill are unavailable could room be made for any non-Indian in the Public Service of their country.

But, under the new Constitution, the position is radically different. It is, really speaking, the Indian who is regarded as the outcaste, or at least as an undesirable; and it is the non-Indian who is privileged and pampered in every possible manner. The old arguments of giving such a special position to non-Indians have, of course, no bearing to-day; for Indians with the necessary skill and ability are available for all departments of the Public Service in ever increasing numbers.

No demand has in the past been so insistent as that for the Indianisation of all ranks of public services. To a certain extent that demand seems to have been met, by legislation or executive action, in the last 20 years or more. But the underlying motive and the real urge for demanding Indianisation in all Departments of the public service in India is, not merely the vindication of the right of the people of this country to administer their own affairs, but also the need for economy in the cost of administration, which the latest measure of constitutional reforms completely ignores. Indianisation in the public services of this country is also needed to infuse a measure

of sympathy and understanding of the peoples whose affairs they administer, as also to afford Indians the requisite knowledge and experience to conduct their own affairs.

The cost of salaries and allowances of the public service, with a large foreign element in it, is another consideration in the same direction. It absorbs more than forty per cent of the provincial revenues.* If to that we add such other contractual obligations, as rent for public buildings, or the cost of stores and other materials, and the charges for provincial debts, all of which are fixed burdens more or less, we can hardly find even ten per cent of the provincial budget available for any projects of public development. The only way in which real self-government can benefit the country, is to develop the economic resources of the country; and so to minimise if not abolish the poverty in the masses of the people. But these can never be done, so long as public resources continue to be pledged in such large proportions for the maintenance of an overpaid Public Service, out of all proportion either to the value of the work done, or the ability of the people to pay for such work.

Indianisation seems to be the only solution, if only because Indian public servants can be induced or coerced into accepting much less extravagant scales of pay, allowances, and pensions, than have to be accord-

*Report of the J.S.C. Para 316:

> "We are informed that the percentage of the total annual revenues of a Province which would be required for the payment of all Service emoluments may be taken approximately as 40 p.c.: and we are satisfied that, in respect of payments which constitute so large a proportion of the total annual liabilities of a Province, the suggestions (of a prior charge on the Provincial Purse) are impracticable."

ed to Non-Indian public servants. A considerable margin remains to be covered in all the important services in regard to Indianisation; but the latest pronouncements of competent authorities make it doubtful if, even in the next twenty-five years, the goal of complete Indianisation, so far even as the Civil Services and civil posts are concerned, will be attained.

Administration in Actual Practice

The work of actual administration in the Provinces is left to these Services; and the system as operating at present is in no great danger of being in any material particular modified. There may be incidental or consequential and minor changes; but they will not affect the main scheme of administration. The District Officer, usually an Indian Civil Servant, will still continue to be the principal and all-powerful representative of the Government; and the presence of elective, democratic, popular institutions will make little difference to the powers, authority and influence of these officers in the actual administration of the country. The old distinction between Regulation and non-Regulation Provinces now no longer exists; and so the difference in the details of administrative mechanism and technique will hereafter also not be so considerable, between Province and Province, as to demand any special study. We need therefore offer no further comment on the system and methods of Provincial Administration in India under the new Constitution.

APPENDIX TO CHAPTER V

PART I

List of Principal existing rights of Officers appointed by the Secretary of State in Council.

(**Note**:—In the case of sections, the reference is to the Government of India Act, 1919, and, in the case of Rules, to Rules made under that Act).

1. Protection from dismissal by any authority subordinate to the appointing authority. [Section 96B (1)].

2. Right to be heard in defence before an order of dismissal, removal, or reduction is passed (Classification Rule 55).

3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights, or compensation in lieu thereof. [Section 96B (2)].

4. Regulation of conditions of service, pay and allowances, and discipline and conduct, by the Secretary of State in Council. [Section 96B (2)].

5. Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable, notwithstanding any rules made under Section 96B [Section 96B (5)].

6. Non-votability of salaries, pensions, and payments on appeal [Sections 67A (3) (iii) and (iv) and 72 D (3) (iv) and (v)].

7. The requirement that rules under Part VII-A of the Act shall only be made with the concurrence of the majority of votes of the Council of India. (Section 96E).

8. Regulation of the right to pensions, and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. [Section 96B (3)].

9. (i) Reservation of certain posts to members of the Indian Civil Service. (Section 98).

(ii) Appointment of persons who are not members of the Indian Civil Service to officers reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State

in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council. (Section 100).

10. Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification Rules 24 and 10).

11. Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council. (Classification Rule 25).

12. Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council. (Classification Rule 27).

13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service Class I, which would adversely affect any officer appointed by the Secretary of State in Council to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March, 1926, or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department. (Provisos to Classification Rules 32, 40 and 42).

14. Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service. (Devolution Rule 10).

15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service. (Devolution Rule 10).

16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint, and to take such action on it as may appear to him just and equitable. [Section 96B (1)].

17. Right of appeal to the Secretary of State in Council, (i) from any order passed by an authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach

of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating to condiitons of service, pay, allowances, or pension made by Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation. (Classification Rule 56, 57 and 58).

18. Right of certain officers to retire under the regulations for premature retirement.

PART II

List of principal existing rights of persons appointed by Authority other than the Secretary of State in Council.

Note:—In the case of Sections, the reference is to the Government of India Act, 1919, and the case of Rules to Rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority. [Section 96B (1)].

2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions. (Classification Rule 55).

3. Regulation of the strength and conditions of service of the Central Services, Class I and Class II, by the Governor-General in Council, and of Provincial Services by local Government, subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March, 1926, should be made without the previous sanction of the Governor-General in Council. (Classification Rules 32, 33, 36, 37, 40 and 41).

4. Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10).

5. Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty. (Classification Rules 58, 56, 57 and 54).

PART III

Non-Votable Salaries, etc.—(Civil).

The salaries and pensions of the following classes of persons are non-votable:—

(a) persons appointed by or with the approval of His Majesty, or by the Secretary of State in Council before the commencement of the Constitution Act, or by a Secretary of State thereafter;

(b) persons appointed before the first day of April, (1919), 1924, by the Governor-General in Council, or by a Local Government, to Services and posts classified as superior;

(c) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service;

(d) members of any Public Service Commission.

The following sums payable to such persons fall also under item (vi) of paragraph 49, and item (v) of paragraph 98, namely:

Sums payable to, or to the dependants, of a person who is, or has been, in the service of the Crown in India under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor-General, or by a Governor upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

"For the purposes of the proposals in this Appendix the expression 'salaries and pensions' will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of the Federation to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of a person in respect of his office."

CHAPTER VI.

PROVINCIAL LEGISLATURES

Composition of the Provincial Legislatures: Unicameral vs. Bicameral.

Provincial Legislatures in India, upto the latest measure of constitutional reform, were Unicameral. In six Provinces, the Act of 1935 establishes a Double Chambered Legislature,—the Lower, or more important House, being called the Assembly; and the Upper, or the less important House, being called the Legislative Council.

Says Section 60:—

"(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber,

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as, the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

Direct Association of the King-Emperor.

In this one Section, there are *two* innovations: The King-Emperor is specifically made an integral part of the Indian Legislatures, in a manner that he never was

before, right upto the Act of 1919.* Section 2 of the Act of 1935 associates with the Governance of India the King-Emperor in that direct personal manner, which was utterly unknown to the Constitution, such as it was uptil now. That association might,—or might not,—prove beneficial to India and her aspirations. But that it is a departure from the course of evolution uptil now is worth noting for its own sake.

It may be that the introduction, or association, of the Indian States in a common scheme of the governance of India explains this radical departure, which may well cause misgivings in some quarters, since the implication of this change are so unfathomable. But that is itself an innovation which has no parallel in other Federations in the world. We need not, however, dwell longer upon it as it is considered more fully elsewhere.

Second Chambers.

The other change lies in the institution of a Second Chamber in the Provincial Legislatures. No reasons are given for this addition and complication in our legislative machinery. We may guess, perhaps, that it is intended to serve as an additional check, coun-

*Cp. Section 63 of the Act of 1919: and Section 72 (A), for the Central and the Provincial Legislatures:—Says Section 63: "Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly.

Section 72A: (1) There shall be a Legislative Council in every Governor's Province, which shall consist of the members of the Executive Council and of the members nominated or elected as provided by this Act. The Governor shall not be a member of the Legislative Council, but shall have the right of addressing the Council, and may for that purpose require the attendance of members.

In these, there is no mention of the King-Emperor. The Governor is, in fact, specifically excluded; and though the Governor-General is not equally clearly excluded, his membership of the Central Legislature is not provided for either.

terpoise, or safeguard, in Provinces deemed to be more unruly or extremist, for vested interests to feel secure. Considering its size, functions, powers, or procedure, it is difficult to see how the Second Chamber will serve this purpose.

Life of the Legislature

Says Section 61:

"(1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule of this Act.

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf made in relation to the Province under the said Fifth Schedule.

Note that, while the Assembly has a life strictly limited to Five Years,—without option even to the Governor to extend its life under any circumstances,—as was only too often the case under the Act of 1919,—the Legislative Council has a *permanent* tenure. The Assembly can be dissolved even before the end of the five years,—though the dissolution is an act of the Governor *within his discretion*, and, as such, his Ministers will have no voice, normally speaking, in forcing a dissolution.* That form of popular control,

*Cp. Section 62(2) (C).

which the power to demand a dissolution of the Legislature gives to the British or the Dominions Prime Ministers, will, accordingly, not be available to the Indian prototypes of such dignitaries; and so the degree of influence wielded by the Ministers will diminish in proportion.

The Legislative Council, or the Upper Chamber, has a permanent tenure, its members retiring one-third every third year; so that at most only about a third of the component parts of the Council could be changed once in three years. In so far as the Second Chamber has concurrent and equal powers in matters of legislation and the general supervision of the administration, the continued maintenance, without wholesale renovation, of the Legislative Council must not only render that body soon out of touch with its electorate; but also act as a drag on any forward tendency in the Lower Chamber, or any progressive ambitions of the people.

Distribution of Legislative Powers

The general principle followed in making a distribution of Legislative powers between the Federal and the Provincial Legislatures seems to be: to make, as far as possible, a complete, almost water-tight, division of functions between the two Legislatures in two separate lists; make each Legislature supreme and exclusively competent to legislate in its own list of subjects; assign certain powers to the Governor-General, or to the Federal Legislature, for Emergency Legislation, as also for legislation applying to Provinces on Provincial subjects, if two or more Provinces agree to demand such common legislation from the Federal Legislature; and, for any powers re-

maining undistributed, or to solve any doubt that might arise, to add a Concurrent List of subjects, on which, under given conditions, both the Provincial and the Federal Legislature would be competent to legislate.

These principles of distributing legislative powers have been admirably summed and commented upon as follows by the Report of the Joint Select Committee of Parliament which considered this Constitution in Bill form:—

> "We have already explained (para. 50 of the Report) that the general plan of the White Paper, which we endorse, is to enumerate in two lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction; and to enumerate in a Third List the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers,—the powers of the Provincial Legislature in relation to the subjects in this list extending, of course, to the territory of the Province. **The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces.** At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a Provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a Central subject; for the Act of each Indian Legislature requires the assent of the Governor-General, and the assent having been given, Section 84 (3) of the Government of India Act provides that "the validity of any Act of the Indian Legislature or any Local Legislature shall

not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be.*

As compared to the existing practice, the change consists in this:—that the overlapping nature of the legislative authority of the Central and the Provincial Legislatures is attempted to be abolished. Hereafter, the laws passed by a Provincial Legislature would be valid only if they deal with the subjects included in the Provincial List (II) in Schedule VII of this Act; and laws passed by the Federal Legislature valid only if they deal with any matter in the Federal List (I) in Schedule VII. To the extent that either Legislature invades the field reserved exclusively for the other, its acts would be *ultra vires* and void.

This creates a serious danger of an ominous increase in constitutional litigation, as in the United States. But, though those who scrutinised the new Constitution in its Bill form were aware of this danger, they have chosen to run the risk, rather than mar the plan of exclusive fields for legislation.

The Concurrent List (III) in Schedule VII does not really gainsay the basic principle of making a complete and exclusive distribution of the subjects for legislation. It only provides a facility for co-ordinating or unifying legislation on subjects which may be of overlapping concern both to the Federal and to a Provincial Legislature.†

*Para 229 Op. Cit. p. 142.

†Cp. Para 233 of the Report of the Joint Select Parliamentary Committee.

Powers of the Provincial Legislatures

The powers of the Provincial Legislature do not seem to have been defined in any specific Sections of the Act of 1935. There are, no doubt, provisions, like Sections 99 and 100, and Schedule VII with its 3 long list of Federal, Provincial and Concurrent subjects for legislation, which may appear to lay down the powers of the Federal and the Provincial Legislature. But the mere right to pass laws on given subjects does not exhaust the volume and character of the influence of the Legislature in shaping the general policy, and supervising the administrative machinery in modern democratic policies.*

Legislative

Let us, however, first consider the specific powers given, even in this department of law-making, which may indicate the extent of the powers of the Legislatures in settling the general policy of Provincial administration.

Says Section 99:—

(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India for any Federated State, **and a Provincial Legislature may make laws for the Province or any part thereof.**

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal

*For a discussion of the general principles of distribution of powers, as also of the composition and functions of the Legislature in the new Constitution, cp. Ch. VIII of the **Federal Structure.**

For the different ways in which the executive can control or dominate the Legislature, see **ibid,** Ch. VI.

law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies;

(*a*) to British subjects and servants of the Crown in any part of India; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State, wherever they may be, or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(*e*) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with, or following that force, wherever they may be.

Broadly speaking, the territorial extent of a Provincial Legislature's authority is confined to the Province; presumably with regard to all British subjects within the Province, and with reference to the subjects on which, under section 100, Schedule VII, List 2 and 3, the Provincial Legislature is allowed to legislate.

Says Section 100:—

"(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters

enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List.")

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the next suceeding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called "the Concurrent Legislative List.")

(3) Subject to the two preceding sub-sections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called " The Provincial Legislative List.")

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof."

Under this arrangement, there is an *exclusive Federal List* of subjects on which the Federal Legislature alone is competent to legislate. Likewise, there is an *exclusive Provincial* list of subjects, on which the Provincial Legislature is alone competent to legislate. Broadly speaking, matters of a common national concern,—applicable more or less to all parts of India, are included in the exclusive Federal List; while matters primarily of local provincial concern,—chiefly of an administrative nature,—are reserved to the Provincial Legislature to legislate upon.

In Cases of Conflict

On subjects, however, on which both the Federal and the Provincial Legislature have interest, or which

relate to more than one Province, room is left for common, or concurrent legislation, subject to the provisions of Section 107, which says:—

"(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact, or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List,, then, subject to the provisions of this section, *the Federal law*, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, *shall prevail*, and the provincial law shall, to the extent of the repugnancy be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General, or for the significance of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter: Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature, without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law

of the State shall, to the extent of the repugnancy be void."

In these provisions, an attempt is made to solve the cases of conflict of jurisdiction or legislation, on common subjects, or between earlier and later legislation by different authorities. Federal legislation is given a certain pre-eminence, in that it is allowed to prevail, in cases of conflict with a Provincial law on the same subject; while Provincial legislation is void *ipso facto*, in so far as it is repugnant to the Federal legislation.

This is rather a confusing provision, and would leave considerable room for litigation of a constitutional character, somewhat in the manner of the United States of America. But, perhaps, the peculiar condition of India,—and particularly the traditions, conventions, and common ground, created by the slow evolution of Provincial autonomy in this country, may explain the necessity of:—

(i) making certain exclusive lists of subjects on which the Federal and the Provincial legislatures respectively can legislate;

(ii) making one more common list, on which both may legislate, the Federal Legislature prescribing the common mode or Form, the Provincial Legislature on the same subject laying down the forms and terms of the actual administration or executive action;

(iii) providing for a solution of the conflict whenever overlapping legislation takes place; and

(iv) assigning certain reserve powers to the Federal Legislature to (x) legislate for more than one

Province even on exclusively provincial subjects; (y) as also in cases of emergency.

Federal Legislation for more than one Province, and in Emergencies

These two matters are provided for by Sections 102 and 103; while the assignment of yet undistributed powers of legislation,—the so-called Residuary Powers,—is made to either the Provincial or the Federal Legislature, under Section 104, under a notification of the Governor-General issued in his discretion.

Says Section 102:—

"(1) Notwithstanding anything in the preceding sections of this Chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by a proclamation (in this Act referred to as a "Proclamation of Emergency"), that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List: Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legisture has under this section power to make, *the Federal law, whether passed before or after the*

Provincial law, shall prevail, and the Provincial law, to the extent of the repugnancy, but so long as the Federal law continues to have effect, be void.

(3) A Proclamation of emergency (a) may be revoked by a subsequent Proclamation; (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and (c) shall cease to operate at the expiration of six months, unless before expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Proclamation in a National Emergency and that in a Constitutional Crisis

It must be noted that this Proclamation of Emergency is essentially different from that contemplated in *Section* 45, (or in Section 93) which the Governor-General (or the Governor) can issue on his own, in a situation, in which, in his opinion, the government of the country cannot be carried on in accordance with the provisions of this Act, while under the Proclamation of Emergency under *Section* 102 the situation is such that the Governor-General declares "a grave emergency exists whereby the security of India is endangered." The former (under Section 45) may simply be a political impasse, wherein the **Government**

of the **Federation cannot,** in the opinion of the Governor-General, **be carried on, in accordance with the** provisions of the Constitution; while the Emergency contemplated in Section 102 must be almost a national calamity, **which imperils the security of the whole country**. The same applies, *mutatis mutandis,* to the Proclamation issued by a Governor under Section 93.

It is an irony of politics, that whereas in a mere political impasse, the Governor-General (or the Governor) is empowered practically to suspend the entire Constitution, and arrogate to himself such functions as he in his discretion deems necessary to meet that particular difficulty, in a national emergency, endangering the security of the whole land, the powers given to the Federal Legislature are to legislate for a Province on a subject of exclusively provincial concern, as comprised in List II of Schedule VII. While Section 45 affects the power of the Governor-General and extends it substantially, Section 102 concerns the entire Federal Legislature, whose power to legislate on a Provincial subject in a national emergency is, if anything, closely circumscribed. Nothing shows up so clearly the angle of vision of those who drafted the Act of 1935,—nothing explains more fully the distrust of the Indian politician in the British politician's mind, —as this difference of treatment of a purely political difficulty and of a national emergency.

Safeguards

Even the safeguards provided,—the checks or balances—in respect of such extraordinary powers, are notably different, though in both cases the *Governor-General acts in his discretion.* (a) A Proclamation of

Emergency lasts *only for six months*, unless earlier revoked, or unless approved by specific resolutions by both Houses of Parliament. But the machinery of government created under a Governor-General's Proclamation under Section 45 *may endure for 3 years*, and *may even involve the abolition or abrogation of the entire Federal Structure of the Commonwealth of India.* (b) Again, while under the Proclamation issued in accordance with Section 45, the Governor-General may exercise almost any power, except suspending the Federal Court, under the Proclamation of Emergency, the Federal Legislature is only allowed to legislate on a Provincial subject, or for a Province. Further comment to emphasise the difference between these two types of emergency action by the Governor-General is superfluous.

Common Legislation for two or more Provinces

Section 103 provides:—

> "If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies be amended or repealed by an Act of the Legislature of that Province."

It is not clear what precise class of subjects are contemplated for action under this Section. But if interprovincial means of communications,—other than

the Railways or Airways, not exclusively in charge of the Federal authority,—need such agreed and common legislation, passed by the Federal Legislature at the instance of the Provincial Legislatures concerned, the Federal Legislation on the matter should have been given a greater validity and permanence than seems to be accorded by this Section. Provincial Legislatures desiring such common, Federal, legislation, ought to be stopped from rendering such legislation invalid by enacting subsequently their own particular legislation on the same subject. There is no mention, in the Section quoted, of any previous agreement on the subject, before one of the Provinces, agreed on such common legislation at the time of its enactment, subsequently proceeds to repeal or nullify it by its own separate legislation; and so the arrangement in this section does not seem to be as happy as it might have been.

Residuary Powers

Section 104 provides for the yet unprovided case of any subject remaining undistributed in the several lists given in the Schedule VII to the Act.

Section 104:—

"(1) The Governor-General may by public notification empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such List, and the executive authority of the Federation or of a Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion."

This is not a very logical solution, though it may in practice prove more effective and acceptable than any other.

On the whole, any attempt to distribute the subjects for legislation, as between the Centre and the Provinces, is unlikely to prove wholly acceptable to ardent advocates of complete Provincial Autonomy. They would confine the Federal Legislature only to a definitely specified list of subjects, leaving all undistributed powers to the Provinces. Nor is it likely to please those ardent Nationalists who see in any prominence given to the Provincial sentiment an encouragement to those forces of disintegration of the Indian Nation, which they would strengthen and maintain at any cost. The supplementary powers given to the Governor-General; the presence of a Concurrent List; and the inevitable action of social evolution or scientific developments, must make this elaborate mechanism extremely complicated and difficult to operate.

Limitations on Indian Legislatures

Before we pass on to a scrutiny of the Lists of Subjects on which the Provincial Legislatures are entitled to legislate,—and in connection with which the executive authority of the Provincial Governments is to be exercised,*—let us consider the limitations or restrictions imposed by law on the legislative powers of the Indian Legislatures.

Reserved Powers of Parliament

By Section 110, the supreme power of Parliament to legislate for British India, or any part thereof, (and

*Cp. Section 49, **ante** p.78.

presumably on any subject), is expressly saved and reserved. Neither the Federal nor any Provincial Legislature is empowered to make any laws affecting the Sovereign or the Royal Family of the United Kingdom, or the Succession to the British Crown, or the suzerainty, sovereignty or dominion of the Crown in any part of India, (*i.e.*, in Indian States), or the following acts of Parliament: (i) the Law of British Nationality; (ii) the Army Act; the Air Force Act; the Naval Discipline Act. The substance of this last may be re-enacted by the Indian Federal Legislature, with such modifications, as regards the Indian Naval forces, as any existing Indian Act may have made, and as regards other naval forces under the authority of the Federal Government, by such Orders in Council as may have been passed under Section 66 of the Government of Indian Act, or (iii) the law of Prize or Prize Courts.

Two classes of exceptions are admitted to this general provision, *viz.*:—(a) in so far as any provision of this Act itself may permit an Indian Legislature to amend this Act, or any Order in Council made, thereunder, or Rules made by the Secretary of State under this Act (*e.g.* in regard to the conditions of service of persons directly appointed by him to certain Civil Services, or certain Civil Posts, in India), or by the Governor-General or Governor, acting in his discretion, or in the exercise of his individual judgment; and, *secondly*, (b) as regards the Prerogative right of His Majesty to grant special *leave to appeal from any Courts, which may be derogated from if expressly permitted under any provisions of the Act of* 1935.

Previous Sanction of the Governor-General or of the Governor.

Apart from these specific restrictions, on behalf of the sovereign authority of the British Parliament, there are the provisions of *Section* 108, which require previous sanction of the Governor-General to be given in his discretion, (*i.e.*, without necessarily any reference to his Ministers), for the introduction of certain classes of Bills in the Federal or the Provincial Legislatures; and of the Governor, similarly, regarding certain matters of provincial legislation. These matters are—

108 (1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordnance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion;

(d) or repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India, or subjects companies not wholly controlled

and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

Similarly, by subsection (2) of the same section, the previous sanction, granted in his discretion, of the Governor-General is made requisite for the introduction or moving of any Bill or amendment, in any Chamber of a Provincial Legislature, which—

(i) repeals, amends or is repugnant to an Act of Parliament extending to British India;

(ii) repeals, amends, or is repugnant to any Governor-General's Act, or any ordnance promulgated in his discretion by the Governor-General;

(iii) or affects the discretionary powers or functions of the Governor-General;

(iv) or affects the procedure in criminal proceedings in which European British subjects are concerned.

The Provincial Legislatures are likewise enjoined to obtain the previous sanction of the Governor, granted in his discretion for the introduction or moving of any Bill or Amendment in any Chamber of the Provincial Legislature, which (x) repeals, amends or is repugnant to a Governor's Act, or an Ordinance promulgated by the Governor in his discretion; or (y) repeals or amends or affects any Act relating to a Police Force.*

*See also sections 226, 267, 271 under which certain classes of Bills or amendments require previous sanction of the Governor. cp. Supra, pp. 93—94. See also the Instrument of Instructions, Articles XVI & XVII ante pp. 116—117.

The previous sanction required for some of these measures is a matter only of Procedure. That is to say, the Governor or the Governor-General is not precluded, merely because he has given the prior sanction to the introduction of a Bill, or to the moving of an amendment thereon, from afterwards vetoing the same Bill or amendment, or for reserving it for the assent of the Governor-General, or for consideration by the King-Emperor.* Conversely, no Bill or amendment, to which the required previous sanction was not given, is to be invalid, if Assent to that Act is given by the Governor, the Governor-General, or the King-Emperor in the case of the provincial legislation. These provisions make the position of the executive chief of the government dominating, while the Legislatures are, in effect, only the registry offices for the wishes of the executive head of the Government.

The Governor's Assent, &c.

We have already noticed the provisions of Section 75 which empowers the Governor, in his discretion, to assent to a bill duly passed by the entire Legislature, or reserve it for consideration by the Governor-

*Cp. 109.—(1) Where under any provisions of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, **the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act** with respect to the withholding of assent to, or the reservation of Bills.

(2) No Act of the Federal Legislature or a Provincial Legislature and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

(a) Where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty;

(b) Where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty.

General. The Governor's assent, given in the name of His Majesty, is, under the Indian constitution, not likely to be a mere formality. Judging from the powers of reservation and reconsideration, provided for in the same section (75),* as well as bearing in mind the express authority to the Governor to "withhold assent," it is likely to be an active check on too great a forward *elan* of the Provincial Legislatures, or their leaders, the progressive, or radical, politicians of India.†

The Governor has, under the same Section, the right to "*return*" a Bill, duly passed by the entire Provincial Legislature, "with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message; and, when a Bill is so returned, the Chamber or Chambers shall consider it accordingly." (75, Proviso). It is not quite clear what would happen to a Bill which has thus been *returned* with specific recommendations

*75. A "Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General:

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendment as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly."

†Note that under section 75 the Governor reserves a Bill to which he neither assents nor withholds assent for consideration by Governor General. It is the Governor-General, who, under the authority given to him by Section 76(1), may in his discretion declare "that he reserves the Bill for the significance of His Majesty's pleasure thereon." The King would, in assenting to or disallowing any measure so reserved by the Governor-General, naturally act on the advice of the Secretary of State; and that officer is outside the scope of any Ministerial responsibility to the Indian Legislature. In such cases, therefore, the idea of Provincial autonomy, in the form of responsible Parliamentary Government, would be nullified.

by the Governor, if the Legislature continues to be obdurate and refuses to make the Amendments desired by the Governor. There is, of course, the expedient of a Joint Sitting of the two Chambers;* and there the reserve powers of the Governor, as also the latter's right to dissolve a recalcitrant legislature.† But whether, by all or any of such means, the Governor will be able to force a Bill upon the Legislature, in the form he wants, is a little doubtful.

The Governor-General's Assent, &c.

The same powers, practically speaking, of assenting to, withholding assent, or reserving a Provincial Bill for consideration by the King are reserved, by Section 76, to the Governor-General, in regard to Bills reserved by the Governor of a Province for consideration by the Governor-General.‡ Likewise, the Governor-General has the right to *return* a Bill with specific recommendation for its amendment to the Governor, and the Bill so returned and recommended must be considered by the Provincial Legislature concerned.

*Cp. Section 74.

†Cp. Sections 61 and 62.

‡76.—(1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill or that he withholds assent therefrom or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, to the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section, and when a Bill is so returned, **the Chamber or Chambers shall reconsider it accordingly,** and if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.

Whether passed with or without amendment by the Provincial Legislature, the Bill must be resubmitted to the Governor - General for his consideration. [76 (1)]. Here also the same doubt remains as to what would happen if the Provincial Legislature concerned remains obdurate, and refuses to pass the Bill in the form recommended by the Governor-General, or in any other form, except the one in which it was originally passed by them.

Powers of the King-Emperor.

Over and above these two dignitaries in India,—the Governor and the Governor-General,—there is the power of the King-Emperor to disallow a Bill reserved for *his* consideration by the Governor-General. Unless within a year after the Bill, on presentment to the Governor for his assent, had been reserved for the signification of His Majesty's pleasure thereon, the Governor publicly notifies that the King has given his assent, no such Bill can become an Act of the Provincial Legislature. [76 (2)]. **Not only is the indirect Royal Veto thus revived, so far as the Acts of the Indian legislatures are concerned; but the veto is made exercisable on the advice of a Minister who owes no responsibility to the Indian people.**

When, since the Statute of Westminster, 1930, the King acts in any constitutional matter in any of his Dominions beyond the seas, he acts on the advice of his Dominion Ministers, even though that advice might be in opposition to the advice of his Ministers in the United Kingdom. True, no actual cases have arisen in which the King was placed in the embarrassing position of having to act, with regard to a Dominion,

on the advice of his Ministers in that Dominion, and in opposition to the advice of his Ministers in the United Kingdom. But the fact remains that, while in all Dominion affairs, the proper constitutional advisers of the British Sovereign are the Dominion Ministers,—even in opposition, if it should so happen, to the British Ministers proper,—in regard to India, which is alleged to be given a Responsible Government under this Constitution, the proper constitutional adviser of the King-Emperor ought to be the Indian Ministers, and not the Secretary of State for India.

The actual position as laid down in the Constitution is quite the reverse. The King has not only the right to withhold assent from a Bill duly passed by an Indian Legislature, but, by a mere silence for more than a year after that measure had been reserved by the Governor (or Governor-General) when presented for his assent, he can make such a measure cease to be, he has the *still more extraordinary right*, in connection with the measures passed by the Indian Legislatures, *to disallow Acts duly passed by the Legislature* and assented to by the Governor or the Governor-General, as the case may be, within 12 months of the date of such assent (77).* This is the direct Veto of the Crown over Indian Legislation. When an Act is so disallowed by the King-Emperor,

> "the *Governor* shall forthwith make the disallowance known by public notification, *and as from the date of the notification the Act shall become void.*" (Italics ours.)

*Any Act assented to by the Governor or the Governor-General, may be disallowed by His Majesty within twelve months from the date of the Assent, and where any Act is so disallowed the Governor shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void

Cp. Section 32 for the similar disallowance of the Federal legislation.

It is difficult to appreciate the significance, or the necessity, of such an extraordinary and unprecedented power to the King-Emperor in the working Constitution of India. The Governor's and the Governor-General's power to withhold assent is bad enough, being a direct veto authorised by the Constitution Act. But that is not all. The King's power to disllow an Indian law, duly passed, is wholly new, both in the Indian and in the British Constitution. The Royal Veto in England has been dead, for all practical purposes, since the days of Charles II, or 250 years. But even when it was in active use, it consisted in a mere negation of a legislation proposed; and not the positive disallowance of an Act duly passed by the Legislature, after as long as 12 months. It is impossible to conceive of any instance, in which, within 12 months of the due passage of an Act of an Indian Legislature, circumstances arise or peculiarities are discovered in the Act as passed, which might necessitate such an unusual course as this. It may legitimately be doubted, if, under the letter or the spirit of the British Constitution, the King has any such prerogative right of disallowance of a properly passed Act of the British Parliament, or of any Dominion Legislature. It is impossible to conceive of circumstances under which all the safeguards against hasty ill-considered, or unfriendly legislation by an Indian Legislation, including the rights reserved to the Governor and to the Governor-General, would fail so completely, that recourse would have to be had to this extraordinary,—and to our mind, extra-constitu-

tutional,—power of the British King to rectify a mischief, presumably, done by such an Act of an Indian Legislature.

Even granting the possibility of such mischief, in the midst of all the safeguards, limitations, restrictions or reservations, is it not possible to undo that mischief by a simple Act of Repeal of the given measure, rather than upset the entire constitution in its basic spirit by such a device? Whatever the rôle of the Ministers, the King in Britain never takes such a direct part in the governing of the United Kingdom. Frankly, it is beyond any mortal intelligence to understand the necessity, or justice, of such a provision, let alone its wisdom or propriety.*

*It is interesting to point out that the Report of the Select Committee of Parliament on this Bill is entirely silent regarding this extraordinary power given to the British sovereign to disallow, after a year, a duly passed Act of an Indian Legislature. Para 143 of the Report says:

"The proposals with regard to the Governor's assent to Bills are in standard constitutional form. They provide that the Governor may at his discretion either assent to a Bill, or refuse his assent, or may reserve the Bills for the consideration of the Governor-General, who may in his turn either assent or withhold assent or reserve the Bill for the signification of His Majesty's pleasure: **We regard this discretionary power as a real one to be used whenever necessary.** (Black ours). We note a proposal whereby the Governor would be empowered to return a Bill to the Legislature for reconsideration in whole or in part, together with such amendment, if any, as he may recommend. A provision of this kind (which has Dominion as well as Indian precedent in its favour), may, we think, prove extremely useful for the purpose of avoiding or mitigating a conflict between the Governor, or perhaps the Governor and his ministers, and the Legislature, and will afford opportunities for compromise which would not otherwise be available."

There is not a word in this of the King's right to disallow an Act of an Indian Legislature, duly passed, as late as a year after its passage; and it is impossible to find either British or Dominion precedent for such a departure from the spirit of any constitutional reform. The declaration by the Federal Court of an Act to be **ultra vires** or otherwise invalid is, of course, quite a normal constitutional provision; but totally different from this power given to the King-Emperor to disallow an Act of the Legislature.

The remarks of the Joint Select Commimittee of Parliament in connection with a proposal to require the previous consent of the Governor for the introduction of any Bill, or amendment, in a provincial legislature, which is alleged to affect the religion or the religious usages of any given community, are interesting to read and contrast in this connection.

Cp. Para 141 of the Report.

Legislative Lists: Comments

The Legislative lists,—Federal, Provincial, and Concurrent,—are given in an Appendix to this Chapter. It would add unduly to the scope of this Monograph, were we to insert here a critical dissertation on each of the several items contained in the different Lists,—the fitness of the Provincial or the Federal Legislatures, respectively, to pass laws on any of those subjects; the propriety of having any particular item in a given List; or the possibility of conflict arising out of any overlapping authority resulting from this distribution of legislative powers between the component Units and the Federation.

For the purposes, however, of a general appreciation of the arrangements made, it may be observed:—

(1) that the scope of the Provincial executive Government is made co-extensive with the legislative powers given to the Legislatures. This applies only to the Council of Ministers, and not to the Governor, the chief executive authority in every Province. The Governor has certain exclusive discretionary authorities, and some Special Responsibilities. In these, the Ministers have either no place; or, if they are consulted at all, the Governor is not bound to follow their advice. Again, while the Governor's assent to every Bill is indispensable, and his previous sanction or recommendation in some measures essential, the Legislature's concurrence in the Governor's Acts or Ordinances passed under given circumstances is not at all necessary. All this is, be it further noted, in addition to the Governor's power to suspend the entire Constitution. (Section 93.*)

*Says Section 93:—

(1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot

(*Continued on page 227*)

(2) The items in the several Lists are, generally speaking, so arranged as to leave the Provincial Governments matters of local import; while to the Federal Government are left matters of national concern. But even in the exclusive Provincial field, there are several items which may be overlapping, or cause confusion in legislation, not to mention conflict in executive authority. Means of communications, (18), other than the Federal Railways, are, for instance, left to the Provincial Legislatures to legislate upon. In view of the growing importance of the road, thanks to the increasing vogue of the automobile traction, and in view of the admitted competition between the Road and the Railway resulting in heavy deficits on the latter,—the chances of conflict in this field are by no means

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be carried on in accordance with the provision of this Act, he may by proclamation (a) declare that his functions shall, to such extent as may be specified by the Proclamation, be exercised by him in his discretion; (b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority: Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provisions of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section (a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; (b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

imaginary. The Provincial Governments have, as will be seen more fully in the Chapter on Provincial Finance, no such ample resources assured to them as to render them immune from temptation to try new sources of income. Some form of taxation on the road traffic may, therefore, be quite inevitable; or some kind of direct encouragement to the stimulation of that traffic by the Provincial government, even to the prejudice of the traffic on the railways, appears to be a very likely contingency in the near future. There are other items, too, in developing which Provincial Governments may come into conflict with the Federal laws or authorities. And though the Constitution does provide that, in the event of a conflict between a Federal or an existing Indian law and a Provincial law passed hereafter, the Federal or Indian law shall prevail, it does not by any means obviate the chance of mischief, disaffection and conflict between the Federal,—or all-India,—authority, and the Provincial.

(3) Conversely, there are common subjects of legislation,—especially in the Concurrent List, on which those believing intensely in the unity, integrity, and solidarity of India as a nation,—or even those desiring a complete and mutually exclusive division of legislative functions betwen the Federation and the Provinces,—might have wished for more exclusive authority to each group. In all matters of social usage and social institutions, like marriage and divorce, it is necessary to leave a margin of power to Provincial Legislatures to shape their own destiny in such matters. There is undeniable danger, however, in such an arrangement, that while some progressive provinces may go ahead with liberalising social legislation,—though one cannot say, at the moment, which, if any, province in India would be the pioneer of social legislation in a liberal direction,—others might lag behind, to

the prejudice, not only of their own social evolution, but even to that of their neighbours. Relief of poverty and unemployment seems, also, an overlapping function, *vide*, items 32 in List II, and 27 and 23 in List III. Social legislation, which will aim at affording a measure of security to industrial and agricultural workers against the predatory and exploitive motives of the capitalist civilisation, is largely a matter of the ways and means, even where the principle is accepted, and the ground is ready for introducing such legislation. The Indian Provinces, it will be evident in the Chapter on Finance, are not likely to have such resources at their disposal as to introduce, in the early years of the new regime, any legislation tending to make more tolerable the lot of the productive worker. But even if they were, one should have thought it would be more to the common national benefit to have a standard plan of action in this field, allowing Provincial Legislatures, or the Government departments concerned, the power to make by-laws under the common national legislation suited to the individual requirements of each province.

(4) Finally, the common ground as regards such matters as the Civil and Criminal Procedure Codes, or the law of Crimes, is equally productive of constitutional doubts and difficulties,-- since a reactionary province may pass legislation in this connection which may affect the civic life throughout the country. It is interesting to note that, at the Round Table Conferences, the Muslim representatives were almost to a man in favour of leaving all the undistributed powers of legislation to the Provinces, giving to the Federation a strictly defined list of subjects to legislate upon, while the Hindu representatives were as clearly on the opposite side. Why the Muslims should desire the largest measure of powers to the Provinces at the

cost of the Centre is difficult to understand, except, perhaps, on the ground that they dread the unavoidable Hindu majority in the Central Legislature.

No attention is paid, in brief, in laying out these Lists, to the needs and requirements of the Indian people,—though more than ample safeguards are provided for the Imperial British interests.

Procedural Restrictions

As though the restrictions, reservations, or checks outlined above, on the powers of the Provincial Legislature were not enough, the procedure laid down for exercising these powers makes it more difficult than ever for the Legislatures to be at all effective in the day to day government of their Provinces. Under Section 73,* apart from Financial Bills,—for which there are special provisions in Section 82,—a Bill, on any of the subjects on which a Provincial Legislature is competent to legislate, may originate in either Chamber of a Bicameral Legislature, or in the Assembly if it is a Unicameral institution. A Bill, once introduced, is not allowed to lapse, merely because of the prorogation of the Legislature, nor even by the dissolution of an Assembly in a Bicameral Legislature, if the Bill in question was pending in the Legislative

*73. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a Province or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Council of the Province at the time of the dissolution of the Assembly, and not passed by the Assembly. But if the Bill is pending final passage in the Legislative Assembly at the time of the dissolution of that body, or if it is pending in the Legislative Council at the time of dissolution of the Assembly, though passed by the Assembly before dissolution, will be considered as having lapsed by the fact of the dissolution. (73).

Relations between the two Chambers

In a Bicameral Legislature, subject to certain exceptions, all Bills must be passed by both Chambers in an identical form, *i.e.*, if one House passes it in a given form, and the other House makes any amendment in that form, then the amended Bill must subsequently be agreed to by the House which had first passed it in the new amended form, before the Bill could be declared to have passed the Legislature, and could be sent for Assent, &c., by the Provincial Governor, [74 (1)].*

*74.— (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

The functions of the Governor under the proviso to this sub-section shall be exercised by him in his discretion.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments,

(*Continued on page 232*)

A Bill, however, which is passed by the Lower House, and sent to the Legislative Council, and is not ready for the presentation to the Governor for his Assent for a period of 12 months after its passage by the Assembly, may lead the Governor to summon the two Chambers to a joint sitting to consider the Bill and vote upon it [74 (2)]. If the Bill in question affects any of the Governor's Special Responsibilities, or relates to Finance, the Governor may summon a joint sitting of the Chambers without waiting for the period of 12 months to elapse before the Second Chamber might be required, as it were, to finish consideration of the measure submitted to it. If the Governor chooses to dispense with this period of grace allowed to the Second Chamber in given cases, he need not at all consult his Constitutional advisers, *i.e.*, he is entitled to act in his discretion.

The meaning of these provisions is, that the Second Chamber is constituted, or at least conceived, to be a sort of revising body, a curb on the enthusiasm of the Lower Chamber. The Assembly may pass certain

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if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill·

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed:

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

measures; but the Legislative Council is given a whole twelvemonth before the Governor can be made by the Ministers to summon a joint session of the Provincial Parliament. The Legislative Council has, indeed, no right to shelve a Legislative measure passed by the Assembly permanently. It has every right to suggest any amendments in the Bill as sent up by the lower House for its consideration and adoption. And all these amendments must either be agreed to by the Assembly before the Bill can be taken up to the Governor for his Assent,—without which it cannot become law,—or a period of twelve months must elapse, in this process of amendments and counter amendments, negotiations and counter negotiations, before the Governor can be made to intervene.

Position of the Governor

The Governor may intervene *suo motu*, if the Bill in question affects the discharge of any of his Special Responsibilities, or relates to Finance. When the Governor intervenes to call a joint sitting of two Chambers *suo motu*, he need not wait for the period of grace allowed to the Upper House to see the reasonableness of the Lower House in having passed the measure in question. The Upper House may delay the measure, by such tactics, only upto a point. But if, within that period, the Lower House is dissolved, or ceases to be in office,—*i.e.*, its term of 5 years expires,—there may be a sporting chance that the new Assembly might not take the same view as its predecessor and might even drop the measure, or agree to the amendments suggested by the Upper House. But unless the Governor really takes a keen interest, and has true sympathy

with the line of policy adopted by the Lower House, under the advice of the Ministers, it is wholly unlikely that a situation contemplated in this section could arise, or its solution as suggested therein could be effective.

Similarly, in regard to the legislative proposals of the Lower House, affecting any of the Governor's Special Responsibilities, or relating to Finance, the Governor can, and probably will, intervene off his own bat, without waiting for the period of grace to expire. But cases are difficult to conceive, in which a Lower House would have passed a measure affecting one or more of the Governor's Special Responsibilities, or relating to the provincial finance, and the Upper House seeks to defeat such a measure by dilatory tactics, which force the Governor to summon a joint sitting of the Chambers, in his discretion. There is not much hope of a Provincial Upper Chamber in India acting, like the Senate in France, as the guardian of popular liberties and a curb on the Executive. In all probability, the Upper House would be more likely to take the line of policy in favour with the Governor than the Lower House; and so the contingency is, normally speaking, not at all likely to arise.

The only assumption, on which such a contingency may seem likely is, that, in a particular Province, at a particular time, the Upper House is more progressive, more radical, than the Lower; and, as such, while the Lower takes a line of policy and adopts a measure which the Governor approves, the Upper House opposes it, and seeks, by the constitutional power given to it of co-equal rights in concurring to a piece of legis-

lation, to postpone decision on the subject,—a wholly improbable, unlikely, almost inconceivable assumption.

Procedure in Joint Sessions

In a joint sessions, the Lower House must be confident of a majority of 30—50 in most cases, if it desires to get a measure passed by this device. For the Provinces which have a Second Chamber have also a much larger number in the Assembly, as the following comparative Table shows:—

Province	Number of Members in	
	Assembly	Legislative Council
Madras	215	56 (maximum)
Bombay	175	30 ,,
Bengal	250	65 ,,
United Provinces	228	60 ,,
Bihar	152	30 ,,
Assam	108	22 ,,

The excess of the Lower House over the Upper is, in all these cases, so considerable, that unless the division in the Lower House is very close, and there is practically no sympathy for the measure in the Upper House, no purpose would be served, so far as the prestige of the Upper House is concerned, in insisting upon or necessitating a Joint Sessions of the two Chambers. In Bengal, for instance, which has the largest Legislature of 315, unless the number supporting a measure in the Lower House falls below 160, and there is no sympathy for that measure whatsoever in

the Upper House, the Joint Sessions even in Bengal cannot defeat the intentions of the Lower House.

The majority needed at a Joint Sitting for the proper passage of the Bill is a simple majority of the two Chambers combined. But, unless the Legislative Council has passed the Bill and returned it to the Lower House with certain amendments, no amendments would be permitted at a joint sessions which are not necessitated by the mere efflux of time. The amendments made by the Legislative Council to the Bill as passed by the Assembly in the course of the Council's first consideration of the Bill, will, of course, be duly considered at the joint sittings. The only other amendments that would be allowed at the joint sessions must be such as are relevant to the matters with respect to which the Chambers are not agreed in the first instance [sub-section (3) provisos (a) and (b), of Section 74]. As to whether or not particular amendments are admissible for discussion at the Joint Sessions must be decided by the person presiding at such joint sittings,—his decision on the subject being final.

Initiative in the Legislature—Finance

The procedure outlined above is slightly different in regard to that in connection with Financial Bills in the Provincial Legislatures. In the first place, whereas in all other matters competent to the Provincial Legislature to legislate upon, the initiative may come from any Member of the Legislature, and in any Chamber, in matters of finance, including the Provincial Budget, the initiative is almost entirely with the

Governor, or his Ministers, acting under recommendation from the Governor. Under Section 78,

"(1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately (a) the sums required to meet expenditure described by this Acts as *expenditure charged upon* the revenues of the Province: and (b) the sum required to meet other expenditure proposed to be made from the revenues of the Province, and shall distinguish between expenditure on revenue account from other expenditure. and *indicate the sums, if any which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities*, (Italics ours).

(3) *The following expenditure shall be expenditure charged on the revenues of each province:—*

(*a*) The salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) Debt charges for which the Province is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(c) the salaries and allowances of Ministers and of the Advocate General;

(*d*) expenditure in respect of the salaries and allowances of judges of any High Court;

(*e*) expenditure connected with the administration of any areas which are for the time being excluded areas;

(*f*) any sum required to satisfy any judgment decree or award of any court or arbitral tribunal;

(*g*) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

(*h*) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion."

All these items, and their list is capable of infinite expansion, especially if the Provincial Legislatures would follow the advice of the Parliamentary Select Committee which considered the present Constitution in its Bill form, and add the salaries and allowances of the Provincial services also to the list of items "charged upon the revenues of the Province" and make them non-votable,—make an aggregate of the Provincial expenditure which may well absorb more than $\frac{3}{4}$ of the Provincial income in the leading Provinces,—those, at least, whose local debt is not condoned to them under the Niemeyer Award, and who have a considerable bill to foot every year in respect of that debt.*

*C. P. Report, J. S. P. Committee, Para 294:—

"There is, however, one existing right of Officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, again nothing derogatory to the rights and powers of the Legislature in the adoption of a special procedure, similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute in stead of being voted annually on supply, and this is in fact generally recognised to be desirable procedure in certain circumstances. But, as we point out below in a slightly different connection (**vide** Para 316), this procedure could not in practice be applied to the salaries of all public servants. We think, however, that it might well be applied without prejudice to the proposals in the White Paper, which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislature at all."

The limits of the effective authority of the Provincial Government,—narrow as they are under other provisions of the Constitution Act,—are restricted to vanishing point by this suggestion. Hence Indian politicians would be more than justified, if, on the strength of this provision alone, they condemn the Constitution of 1935, as offering them a stone when they had asked for bread.

Non-Votable Items

Section 79 makes explicit the non-votability by the Provincial Legislature of the seven categories of expenditure relating to a Province, *and any others* that may be added by the Provincial Legislature itself, or may follow under the provisions of the Constitution Act itself. These items are simply not submitted to the vote of the Legislature at all. The Legislature is, indeed, given the empty right of merely discussing, without the power to vote upon, all other items mentioned above, except the salary and allowances of the Governor, and other expenditure in connection with his office (*e.g.*, his Private Secretary and the staff attached to that office) ordained by an Order in Council.* But such a barren privilege of merely discussing what the Legislature is incapable by its vote to affect can only lead to needless heart-burning,

*79. (1) **So much of the estimate of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the note of the Legislative Assembly,** but nothing in this subsection shall be construed as preventing the discussion in the legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

disappointment, and conflict between the Legislature and the Executive. In every instance in which the authors of the Constitution Act of 1935 could manifest their distrust of the Indian Legislature, and could devise any means to guard against such distrust of theirs being justified by events, they have taken the utmost possible precautions to provide against. The working of this Constitution, therefore, in any hope of making it yield constructive results for the benefit of the people, is bound to be sadly disappointing.

The power given to the Lower House, under Section 79 (2), to vote grants for the provincial expenditure, which is within its competence to vote upon, marks that Chamber off from the Upper House, which is not entitled to assent to any grants for expenditure. But the Lower Chamber can itself function, in this regard, only on a recommendation of the Governor. It is, indeed, not stated how the Governor is to recommend a grant,—*i.e.*, whether he would, in making such a recommendation, *act in his discretion*, or *exercise his individual judgment, or simply let his Ministers act* in his name. But we may reasonably assume, that, in this matter, the Governor stands for his constitutional advisers, *i.e.*, the Ministers.

The Governor's Instrument of Instructions contains clear provisions in this behalf, which would assign certain powers to the Provincial Finance Minister;* but, so far as the Legislature is concerned, all this would be a matter of the Ministers' collective responsibility. The Governor's initiative remains unaffected. The precedent of the British constitution, that no grants for expenditure can be voted except on a motion by a

*Cp. Instrument of Instructions, Article XIII **ante** p. 115.

Minister of the Crown, is inapplicable, strictly speaking, in a Constitution wherein a considerable proportion of the public income is pledged before it is received, and is placed by the explicit injunction of the Constitution outside the control of the Legislature.

The Governor is further made an effective, co-ordinate, and even overriding authority in matters of finance by the following provisions of the Act:—

Section 80:

"(1) The Governor shall authenticate by his signature a schedule specifying (a) the grants made by the Assembly under the last preceding section; (b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers:

Provided that, if the Assembly have refused to assent to any demand for a grant, or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him *to discharge that responsibility.* (Italics ours).

(2) The schedule so authenticated shall be laid before the Assembly, *but shall not be open to discussion or vote* in the Legislature. (Italics ours).

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated."

This means that:

(1) In the cases specified in section 78, the expenditure is *not to be voted* by the Provincial Legislature at all, even though it absorbs more than half, or three-fourths, of the revenues of particular Provinces; and even though, further, such expenditure may involve grave questions of fundamental policy. The right merely to discuss some of these items is a barren privilege, since the discussion revealing acute difference of viewpoint between the settled policy of the executive government, and the desires of the people as voiced in the Assembly discussions, can only intensify tension, or widen the gulf between the Executive and the Legislature.

(2) Even as regards the items of expenditure which are subject to the vote of the Provincial Assembly, in any case in which the Governor considers any of his Special Responsibilities involved, that officer is *entitled to restore a grant* refused by the Assembly, and even to *restore the reduction of any grant*, which in the opinion of the Assembly need not be as considerable as the Governor has indicated in his authenticated schedule of expenditure.

Finance and Special Responsibilities

(3) The doctrine of the Governor's Special Responsibilities is not applied, it is true, in so many words, to the maintenance of the provincial credit. Hence that summary, overriding power over the Budget, which is given under Section 12 (1) (b) to the Governor-General in respect of the Federal Budget,

may be said to have been denied to the Governor.* But, reading Sections 78 and 80 together; and bearing in mind the real scope and intention of Section 52 detailing the Governor's Special Responsibilities, it is not at all open to doubt that an overriding power is vested in the Governor as regards all concerns of the Provincial Finance.

(4) If in any year the authorised expenditure is exceeded, the Governor is entitled, by Section 81,† to present a *supplementary Financial Statement* for that year to the Assembly; and the latter has the same power,—or the lack of it,—to deal with that additional expenditure. If, then, in any Province, the Government specialise in the practice of underestimating the expenditure on objects or departments not likely to find favour with the Assembly, at the proper Budget

*Says the Report of the Joint Select Committee of Parliament, Para 84. "We think it desirable to make some reference to the suggestion that, among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province, following the analogy of the special responsibility of this kind, which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation. A similar proposal was examined and rejected by the Statutory Commission **on the ground that a power of intervention over so wide a field would hinder the growth of responsibility.** We agree with this view . . . . . But the addition of a special financial responsibility would increase unduly the range of his special powers. There is no real parallel with the situation at the centre, where there is a paramount necessity to avoid action which might prejudice the credit of India as a whole in the money-markets of the world, and where so considerable a proportion of its revenues is needed for the expenditure of the reserved departments."

The Committee, however, fail to see that in the Provinces, too, for all practical purposes, almost an equal proportion of the revenues is pledged to objects over which the Provincial Legislature would have no control; and so the non-addition of a special responsibility upon the Governor in matters of finance does not really add at all to the powers or influence of the Provincial Ministers

†81. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

time, they can always overreach the Assembly by this device of Supplementary Estimates, and a supplementary schedule of authenticated expenditure.*

Radical Innovations in Financial Provisions

(5) The basic theory of the liabilities placed on the Indian revenues has been radically recast by the Act of 1935, and the reflection of that change is traceable in the principles of provincial expenditure. Says Section 150:

(1) *No burden shall be imposed on the revenues of the Federation or of the Provinces except for the purposes of India or some part of India.*

(2) Subject as aforesaid, the Federation or *a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federation or the Provincial Legislature,* as the case may be, *may make laws.*" (Italics ours).

*It is interesting to note the observations of the Parliamentary Select Committee who considered this constitution in its Bill form. They say (para 317 of the Report) speaking of the regular payment of the salaries etc. of Public Servants:—

"In so far as the apprehension may be that a temporary deficiency might occur in the cash required to meet such current obligations as the issue of monthly pay, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department, must, in our opinion, be relied on as the real safeguard. Nor must it be forgotten that although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services. If need arose for the Governor to take special steps for the purpose, in virtue of his special responsibilities, it would, of course, be open to him to adopt whatever means were most appropriate in the circumstances, and, if necessary, to meet the situation by borrowing. The powers, available to him personally in this respect would be identical with those available to the provincial Government. If he should seek assistance from the Federal Government in the form of a loan, his application would be governed by the provision relating to provincial borrowing which we have already advocated. The Governor-General will, of course, be responsible for securing the interests of officers serving at the Centre."

Under this provision any monies received as income or revenue,—and the definition of "revenue" is very considerably enlarged by Section 136, including not only the yield of taxation and other normal recurrent income, but also the borrowed monies,—are open to be spent on *any* purpose, which might be regarded as among the "purposes of India or any part thereof."

Contrast with this the language of the Act of 1919, Section 20, and 22 of which are as follows:—

> "20 (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, *be applied for the purpose of the Government of India alone.*
>
> (2) .. .. (3) .. .. (4) .. ..
>
> 22 Except for preventing or repealing actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applied to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues."

Whether or not a purpose for which a grant is demanded is one on which a Provincial (as well as the Federal) Legislature is entitled to make laws, the grant can be validly made. The definition of what is called "purposes of India" is provided in the gloss of the Select Committee which scrutinised this Constitution in its Bill form. Speaking of the question of lending Indian troops to fight outside the frontiers of India in the Imperialist wars of Britain,—which was absolutely forbidden under all the previous Government of India

Acts, except with the consent of both Houses of the British Parliament,—the Committee observe.*

> "There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas, in which considerations of India's defence have not been involved; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive; or, conversely, that if it is not excessive, troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistant, but which nevertheless must be provided for. There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions. If on such occasions, the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves *the defence of India in the widest sense*; (Italics ours) and, secondly, whether he can spare the troops having regard to all the circumstances at the time. *Both these decisions would fall* within the exclusive sphere **of his responsibility.** If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow countrymen were exposed to the risk of operations in a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-

*Para 178 of the Report.

> General should be limited in this matter. Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he would give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing, the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations........ If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing, (and the interests in question did not fall under the other reserved department of external affairs), we are of opinion that it would need to be ratified by the Federal Legislature."

This is a long extract, but it serves to indicate, perhaps more accurately than any other, the new outlook of those responsible for the latest Constitutional camouflage for India. Having permitted the employment of Indian revenues *for any purpose* regarding India,—and the term purpose is sufficiently vague,—they exclude certain departments of Government completely from the purview of the responsible Indian Ministries. Questions relating to Defence may arise, not only in the Federation, but also in the Provinces, in regard to military lands or buildings, drilling of troops, &c. The Provincial Legislature may not be competent to make laws for a given subject; but the Provincial purse would, for that reason, not be immune from having to make contribution to purposes which

might be regarded as "*defence in the widest sense.*" This may not be defence of India's frontiers at all; but may, quite frankly, be an Imperialist British War. The Governor-General has sole discretion and responsibility in any thing that concerns India's defence, even in this "widest sense". Even if it is not concerned with India's defence in that sense, but is a matter in which India's "general interests" may be affected,—and that without trenching upon another reserved Department, that of External Affairs,—and if a financial liability is involved in the use of troops loaned, in an Imperialist British War, the powers and authority of the Governor-General are not restricted. He *may* consult his Federal Ministers; but he would not be bound by their advice. Further, the financial contribution in an exclusively British Imperialist quarrel, merely on the ground that the "general interests" of India may be affected, would have to be ratified by the Legislature. But, very likely, if the Governor-General can urge that one of his 'special responsibilities' (*e.g.*, the credit or the financial stability of India)—would be affected, he can include in the authenticated schedule of authorised expenditure any amount needed to make good such a contribution; and so frustrate completely the Federal Legislature,—even if it were bold enough to oppose such a contribution from the Indian revenues for a purely British Imperialist affair.*

Financial Legislation

(6) A Bill relating to finance is, no doubt, excluded from the co-equal powers given to the Upper Chamber in all other matters for legislation, in all Provinces

*Cp. particularly Sections 8, 11, 12, and 34 of the Government of India Act, 1935.

which have a Bicameral Legislature. But that does not by any means make the Lower Chamber the supreme, or exclusive, custodian of the Provincial Purse. The Governor must, in the first instance, *recommend* a Bill, whether it involves additional taxation, or imposes additional burdens on the public purse of the Province. Says Section 82:—

> "(1) A Bill or an amendment making provision (a) for imposing or increasing any tax; or (b) for regulating the borrowing of money or for the giving of any guarantee by the Province, or for amending the law with respect to any financial obliagtions undertaken or to be undertaken by the Province; or (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.
>
> (2) A Bill or an amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.
>
> (3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to the Chamber the consideration of the Bill."

The Governor not only initiates motions for grants of expenditure,—of course through his responsible Ministers in the Assembly. He can also recommend Bills imposing or increasing taxation, or involving

expenditure from the revenues of the Province. Though the Governor will act, in these matters, on the advice of his constitutional Ministers, in view of the hold he will have upon those Ministers, the powers of *initiative, recommendation, authentication of a schedule* of authorised expenditure, read in conjunction with the doctrine of Special Responsibilities and Discretionary Powers of the Governor, the scope for the influence of the popular Ministers becomes exceedingly restricted, if it exists at all. The key position in the new Constitution rests entirely with the Governor.

The real powers of the Provincial Legislatures,—and their chiefs, the Ministers,—are thus extremely narrowed down. They are powerless, under the Constitution, to do any real good to the peoples who elect them. And there are infinite ways in which their action may be turned into considerable damage to themselves, *e.g.*, the provision in Section 82, whereby the Legislature is authorised to declare, by its own act, particular expenditure to be expenditure *charged upon the revenues* of the Province, and as such not votable by the Legislature. This act of self-denial would be certain to be interpreted as an act of abdication; and the Governor will not permit, on a later occasion, any Legislature, which has been foolish and short-sighted enough to denude itself of such powers, to resume those powers.

Membership in the Provincial Legislature

Not only is the composition of the Legislature, in 6 Provinces at least, such as to add unnecessary checks in the form of a Second Chamber,—a costly and needless impediment; the personnel of the Legislature as a

whole, and particularly of the more important Assembly, is so carefully designed by the architects of this structure as to make it all but unlikely that the real domination of the nominees of the British Imperial Government could be effectively challenged.

It is unnecessary to go at length into the details of the composition of the several Provincial Legislatures. Elsewhere has been given, in a tabular statement, the composition of these bodies, which would reveal the following salient features worth a general notice:

(1) The Legislatures are composed, in every instance so that, in the aggregate, the several Communities should be balanced; or at least that sufficient representation should be assured by law to the different communities in a Province to permit of a semblance of excuse to the Governor for intervention, under some one of the innumerable discretionary powers he enjoys, or the special responsibilities that he is charged with. The various communities required to be represented, by separte Communal Electorates, returning only members of those Communities to represent them in the Legislatures, are not all of a size at all comparable to the general mass of the population, or even the wealth and other status of that population. Anglo-Indians, Indian Christians, Europeans are, in almost every Province, in a microscopic minority, in comparison to the bulk of the population in the Province. Nevertheless, these are required to be represented by their own separately chosen co-religionists or compatriots,—who have, by the very nature of their being, to be extremists in politics, and particularly in exaggerating the interests of their particular little group of people. Hence the Provincial Legislature will miss,—except in rare instances and on very rare occasions,—that spectacle of general agreement and mutual sym-

pathy among its members which seems indispensable for a progressive government in modern times.

(2) In addition to the separate Communal Representation, there are separate class representatives,—for Landholders; Commerce, Industry, Mining or Planting and Labour. These are running at right angles, as it were, to the Communal Representatives, since the economic divisions implied by these classes cut right across the communal barriers. If representatives of different communities should chance to combine on a matter affecting them as a class, there is an antidote provided in these *class* representatives,—who may not be numerous enough to turn the scale in voting; but who may nevertheless be important enough to necessitate, or excuse, the Governor's intervention, or to hold the balance even, and so obstruct progressive legislation.

(3) In addition to classes and communities, there are representatives,—separate, of course,—of *women*, and of *Universities*. Women are, undoubtedly a most important minority, whose separate interests need to be protected against exclusively man-made legislation. But to guarantee that protection, it is not necessary to foster a spurious antagonism between the sexes. The organised women of India have always demanded equal franchise,—which has not been granted,—and the open door for entry into the legislatures. But they have, in stead, been granted the questionable boon of *reserved* seats to be filled by women only,—though they may be elected, in some provinces at any rate, by mixed electorates of men and women.

The minimum thus reserved for them will inevitably become the maximum ever available to them. The women of India will thus never be able, so long as this system of reserved seats lasts, to obtain their rightful number of representatives,—assuming that it is essential that women should be represented

by women only. And yet they would have the stima of special, if not separate, representations. Looked at dispassionately, the whole system appears to indicate a consuming desire, in the minds of those who have devised this ingenious instrument of political disunion, to prevent the Indian people from ever combining and presenting a united front against the alien Imperialist exploiter in their midst.

(4) There is not even that justification for a separate representation to the Universities in the several Provinces. But for a slavish imitation of British models, there is no intelligible reason for this addition. It may be assumed, without any violence to the theory of political probabilities, that a good proportion of the men and women elected in any Province to the local Legislature would be University-educated folk. Some among them may even have keen interest in problems of education, and possess personal experience of the same. If there were no separate representative for the University proper, there would be every likelihood of all these educated men and women,—perhaps from all parties and communities in the Legislature,—to co-operate as people of common sense in tackling problems of national education, which are supposed to be peculiarly within the province of the Universities. But given the presence of a special representative, that sense of responsibility among other members will weaken, if not disappear; and the concerns of the University may be left to the varying shades of the political complexion in the Legislature, or, worse still, to the pedantic narrowness of a special representative.

(5) Constructed on such a diverse basis, the Provincial Legislatures cannot develop that two-Parties System which is such a marked feature of political life in countries of Anglo-Saxon tradition. True, at the present moment, there seem to be only two

dominant Parties in the Indian political arena: those who stand for the National Congress and its programme or ideals, and those who support or depend upon British Imperialist forces to uphold their rights. Mr. Jinnah and other Muslim leaders of his way of thinking may question this alignment of the political forces in the country; but even Mr. Jinnah himself and his followers have hitherto worked far more often in collaboration with the Congress members in the Indian Legislature than with their opponents. The Mussulmans of India, *qua* Mussulmans, do not, and cannot form a party by themselves. They must merge into and work with the other Nationalist forces, for the intelligent Mussulman in India desires his country's emancipation as much as the Hindu. The difference, if any, is more of method than of objective; more of tactics than of ideals.

But when the present inevitable clash of interests between the Imperialist and the Nationalist ceases to have any real substance, new lines of division must emerge which will have little relation to the Communal line. At that time, Indian Political Parties will be represented rather by groups than by two definitely opposed camps,—and two only. In a group system of political organisation, as in France, there is always a danger to the stability of governments and continuity in their policy, which the alteration in office of two Parties may obviate to a considerable degree. On the other hand, it must also be recognised that the evolution and working of groups, once it takes place, will bring into existence sufficient number of trained, experienced leaders in each group, who would, after a time, render the danger just noted insignificant.

Qualifications of Candidates

With these characteristics, the Constitution further requires that the candidates for the Legislature in every Province should be resident, for varying terms,

in the Province; that they should possess certain (a) property, (b) literacy, or (c) status qualifications. We have given extracts in an Appendix (II) to this Chapter of these qualifications of voters and candidates, as prescribed in Schedule V of the Act; and need not consider them in detail here.

It is noteworthy, however, that though the legal age of majority for all contractual purposes in India, in both the leading communities, is 18, the minimum age for voting is 21 under the law; for standing as a candidate for the Assembly, 25; while for the Legislative Council, the corresponding minimum age is 30. This distrust of youth is meaningless; for the difference in intellectual evolution between 21 and 25, or between 25 and 30, is not so considerable as to justify this distinction. However, the older a prospective member is, the colder, more responsible, and more accessible to appeals of self-interest he may be; and so presumably more amenable to the designs of British Imperialism in India.

It must be added, in fairness, that the average age of candidates elected to either Chamber would be much above the minimum here prescribed. That is, therefore, not a point of very material criticism upon the structure and composition of the Indian Legislature. Under Section 67:

> "Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or, some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case."

The forms of oath or affirmation given in Schedule IV require the person swearing (or affirming) to be

faithful and bear true allegiance to the King Emperor, his heirs and successors. Would a republican government, lawfully established in Britain, make the President of that country a successor of the King-Emperor? The forms of oath provided in the Schedule permit rulers or subjects of Indian States to make a reservation in respect of their own States. But no such saving is permitted in the case of British subjects in respect of a prior allegiance to their own country. It is also interesting to note that no oath is taken by any body to respect ths Constitution. It is doubtful if even the oath taken by the King-Emperor, at the time of the Coronation, will include any reference to the new Constitution of India, and pledge the British sovereign to the maintenance of the Indian people's liberties, such as they are under the new Constitution.

Disqualifications

Of the disqualifications upon membership in a Chamber of the Legislature, the more considerable are mentioned in Section 69, which precludes a person from being chosen or from being a candidate who:—

> (a) holds an office of profit under the Crown in India, except that a Ministership under the Federation or in a Province is not be held as disqualification; nor such other office as the Provincial Legislature declares by Act not to be a disqualification.

This seems to open the door to possible political corruption; but in view of the guaranteed rights of the Civil Services, it is unlikely that any considerable patronage would be open to the Ministers for being used as an engine of corruption. Holding valuable contracts under the Government does not constitute a disqualification; though that may be much more likely to engen-

der corruption than an office declared by Act of the Legislature to be a disqualification.

The right of the Indian Ministers to advise in the distribution of Honours and Titles does not seem to be clearly established, if it is ever permitted to them. Hence that further source of Parliamentary corruption is also not likely to play considerable part in the political fortunes, at least of Parties with whose programme the Governor is not in sympathy. Inasmuch as the bestowals of Honours and Titles is a matter of Royal Prerogative, it is doubtful if an Indian Legislature would be allowed to legislate barring the conferment of such distinctions, and thereby removing a source of influence to the Government, which plays such an important part in the public life of Britain.*

(b) is declared by a competent court to be of unsound mind, or

(c) is an undischarged insolvent.

These two need no comment.

(d) has been found guilty of corrupt practices at elections, or of any offence relating to elections, which has been declared by Order in Council, or by Provincial legislation, to be involving disqualification.

This, however, may be cured by efflux of time, as provided for in the Order or Act, as the case may be. This is salutary to ensure purity of elections, though its deterrent value is not beyond question.

(e) Conviction of offence by a competent court, and being sentenced to transportation or imprisonment for not less than two years, unless 5 years, or any other period fixed by the Governor in his discretion, have elapsed since then. As no mention is made of the kind

*Cp. Section 101.

of offence constituting a disqualification under this sub-section, it is open to hold that political offences will continue to be disqualifications, irrespective of any violence or moral turpitude. This is one of those unfortunate legacies of the prevailing system of Government, in which Indian Politicians are inevitably regarded as "agitators", and the spirit of which there is every reason to fear will be continued under the new regime, when political intolerance becomes more rabid amongst the Indian Parties themselves. Even as regards the so-called offences involving moral turpitude, there are many offences, in the commercial society of today, which may not be offences if we have a different social outlook. Those, moreover, who have suffered the pains and penalties imposed by the law, may well claim to have expiated their crime; and so must not be further punished by the continued maintenance of this additional penalty of a loss of civic rights involved in this disqualification.

(f) fails to make a due and proper return of election expenses within the prescribed time, after having acted as a candidate or an election agent.

Here also efflux of time is allowed to wipe out the disqualification. It may be added that this is necessary so long, not only as elections continue to be so expensive as they are today, but so long as the expense of the elections is borne wholly by candidates, or their Parties. It is one of the greatest handicaps of a Political Party like the Indian National Congress, that majority of their candidates are such as cannot bear the heavy cost of elections in India. Despite the immense popularity of the Congress with the masses, they have often to prefer persons, in their choice of nominees for elections, who could bear their own burden of election expenses, or contribute to the Party chest for this purpose. The Congress has, therefore, often, to accept

candidates,—or refrain from contesting seats against particular individuals,—who have been financially helpful, even though their intellectual capacity, political sagacity, or general worth may be excelled by many others in the Congress ranks. If the Congress, or any Political Party in India, desires to escape this incubus of riches, the Legislature must set about amending this section, so as to prevent elections becoming such burdens; make most of the services needed in electioneering,—*e.g.* conveyances, or a prescribed amount of printing and distribution of literature,—a public charge, in regard to the candidates of at least recognised Parties commanding a prescribed minimum of votes in the Province.

A specific subsection of this section also makes it illegal to elect to the Provincial Legislature any one who has been, at the time of the election, serving a sentence of transportation or imprisonment for a criminal offence. Will this cover political prisoners, even those who have been duly tried and sentenced, as also Detenues? Perhaps a disqualification like this may prevent *ab initio* the election of a person such as Mr. Sarat Chandra Bose, who was elected at the last general elections to the Indian Legislative Assembly.

Another subsection also provides for the case of a person, already a member of a Chamber of the Legislature, who has since been convicted and sentenced so as to be disqualified. In such a case, the disqualification would not operate immediately, but only 3 months after the date of the sentence, so as to allow time for appeal. During the period allowed for such appeal, the member is not disqualified, but is debarred from sitting or voting.

If a person, not qualified, or actually disqualified, or prevented from sitting and voting under the provision just mentioned, sits and votes in a Chamber of the Legislature, "he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees." (70)

Under Section 68* no one can be a member of both Chambers of a Provincial Legislature, where that body is Bicameral. The Governor, *exercising his individual judgment*, is empowered to make rules to provide for the vacation of one of the seats, in one of the Chambers. There is, apparenlty, no objection to one and the same person being elected to more than one seat in the same Chamber, but rules made by the Governor in his individual judgment may provide for vacating of all other seats except one to be held by one and the same person.

Similarly, no person shall be a member both of the Federal Legislature and of a Provincial Legislature. If a person is chosen member both of the

*68. (1) No person shall be a **member of both Chambers of a** Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature, and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Provincial Legislature.

(3) If a member of a Chamber (a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or (b) by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Federal and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

This does not preclude members of a Provincial Legislature, while they are such members, from standing as candidates to seats in the Federal Legislature, and *vice versa*. It only requires them to vacate one of the two seats, in the Federal and in the local Legislature,—and that, too, after a certain time allowed to such persons to make up their minds has passed. It is possible that this facility may, in the hands of astute Party managers, be abused; but the danger is remote.

Withdrawal from Membership

Resignation of a seat by a Member is allowed at any time. Non-attendance, without permission of the Chamber, for a period of sixty days during which the Chamber has sat,—not counting the period of prorogation, if any, nor for any continuous adjournment for more than 4 days at a time,—would also compel such an absentee member to vacate his seat. [68, (3) and (4)].

A critical study of the qualifications and disqualifications imposed upon candidates and members of the Indian Legislatures, as also of the Franchise to Indian citizens to vote for such representatives of theirs, reveals certain basic considerations that all advocates of a working democracy must seriously ponder over. The life of the Assembly being 5 years, the chance to express public opinion will only occur once in 5 years,—apart from by-elections, or earlier dissolution

of the Assembly. At the time of a General Election, issues are almost invariably so mixed, that it is impossible honestly to say what really was the verdict of the people, on each particular issue. The utmost that can be said, if any definitely organised party has been given a clear majority at the polls, is that the programme of that Party is, in general, endorsed by the people. That may not necessarily mean popular endorsement of every detail of that programme, in so far as it is embodied eventually in legislative measures; and much less, of the actual administrative action taken thereunder.

The enfranchisement of the Indian citizen still applies to about 25%* of the adult mass in British India; while in the Federated States, if any, there is still hardly a trace of popular representation in the Councils of those States. But even if we overlook ¾ of the people who have no vote; even if we disregard more than 90% of the adult women who are not yet enfranchised, the chance of expressing one's view on a mixed lot of political questions, once every five years or so, does not constitute anything like a working democracy.

It may be urged that Parliamentary Democracy, in every country in which it is tried, functions in the same manner; and that true self-government is possible

*According to the Census of 1931, there are in British India, 139,698,972 males; and 131,376,733 females of all ages. Of these, 67,727,022 men were 20 or less years of age; while 64,970,704 women were similarly 20 or less, and so disqualified from voting, even if they were otherwise qualified. Of roughly 72 million males, about 30 millions are entitled to vote under one or the other qualification in all provinces,—yielding an average of about 42 p.c. voters of the adult male population. Of 66.40 million adult women, about 6 million have been similarly enfranchised, or one in every 11,—90 p.c. of the adult women being voteless. Of the combined population, 271 million in British India, only about 36 millions, or about 13 p.c., are enfranchised; and of the total adult population of 138.38 million, only 36 million, or a little more than 25 p.c. are entitled to a vote.

only on the Municipal, or District Local Board scale. We shall have something to say on the extent of real self-government possible in the Indian towns and villages,—of which there are 500,000 in British India alone. Here let it be added that the scope for a working democracy, on a scale like that of an average Indian Province,—let alone the entire India,—is all but a contradiction in terms. It is a physical impossibility.*

Recognising this impracticability of a working democracy, however, does not involve a categorical denial of the principle or the practical desirability of self-government. If we cannot have it on the provincial scale; if territorial and communal and class electorates render this ideal unattainable, could we not recast (A) our basic notions of political franchise; and, at the same time, (B) reconstitute our administrative units, so as to permit of a closer interest being taken, and more real popular verdict being possible, more substantial popular control of their own governmental machine feasible?

(A) There are two devices which may well be considered in this connection. On the one hand, instead of making constituencies on a territorial basis,—apart from special class constituencies, or small minority communities' seats,—could we not make our constituencies on a functional rather than a geographical basis? Workers would then have a much more direct interest, and more intimate knowledge or understanding of the problems of government, on which the

*When Mahatma Gandhi inclined towards "indirect" elections, for the National Legislature at least, he was thinking rather of the difficulties of managing such huge constituencies as Indian territorial constituencies are bound to be. But the difficulty of adequately interesting such an electorate in the issues at a general election seem not to have been emphasised at all.

fate of Legislatures should be decided, and support to Political Parties assured. Functional voting may not, it is possible, embrace all the population,—especially in a land where economic parasitism is an ancient canker gnawing at the vitals of the body politic. Besides, functional constituencies cannot be devised on an All-India scale, or even on an entire provincial scale,—though in the latter case the danger is much less than in the former. But some kind of a Federal hierarchy in each functional group could be devised to meet this difficulty. Besides, Agriculture is a nationwide industry; and so also is transport. Banking and other similar trades could be also organised on a functional basis. Industry is less widely spread; and particular industries may tend to be exclusively localised. But that need not preclude the possibility of organising and grouping all industrial and agricultural workers,—which would account for more than 90% of the population,—into units, each to return a number of candidates, so as to allow of Minorities even in such units to have their say. Perhaps some device of proportional voting would serve the turn.

Functional grouping would also include professional workers, and cottage workers,—artisans carrying their own burden of finding the necessary capital as well as the necessary market,—who are not paid wage-earners, but each a small producer in his own way. It may also include traders, shopkeepers, merchants, middlemen under merchants, or industrialists, and other such capitalist producers, provided they are actively engaged in some work of a productive character. The analogy of the Hammond Committee's recommendation regarding the voting rights in a com-

mercial constituency under the new Constitution,—*i.e.*, those only being qualified to vote who are actively engaged in trade or industry, transport or banking and insurance, and who have an annual income of not less than Rs. 10,000 from such sources,—may well be pressed for a similar recouping of all constituencies in the country, though of course, that particular limitation of franchise is not commendable.

(B) If to this we add the further improvement of breaking up our present day Provinces, and making them much smaller units,—say of the size of a present district, with about 4,000 sq. miles of area, and about a million population,—we should get all the interest and understanding of the problems of government in the electorate, as also convenience in handling such constituencies.

We have already offered some observations about the utterly *ad hoc* nature of the present British Indian Provinces,—almost all exclusively the creations of historical accident and administrative convenience. More than one important Province has had its boundaries illogically shuffled in the past. Even today there are Provinces, whose component units would be much more satisfied, whose aspirations more easily fulfilled, by being set up into separate units themselves. Considerations of modern economic organisation,—permitting only a certain extent in area and population,—with a reasonable degree of homogeneity in conditions and resources,—to be exploited with the utmost advantage, point also in the same direction. While a unit with a smaller area or population would be too small to be properly worked, units

too large in area or in population, or too heterogeneous in resources and conditions, would prove too unwieldy to be operated economically,—with definite material advantage to their people.

In the concluding Chapter of these Monographs, an attempt is made to suggest a redistribution of the Provinces, which would seek to combine ethnic homogeneity with economic unity, to permit of the most advantageous administration, without, at the same time, affecting the intrinsic national solidarity of the country as a whole. For real self-government a much smaller size than that of a modern Indian Province is indispensable, as also for proper economic working.

On the other hand, the national integrity is equally indispensable, if India is to make any contribution of her own to the cause of human advancement. Perhaps, it would be as well if the Provinces and States, as we know them today, were abolished, and replaced by more compact, homogeneous, and intrinsically more economic units, which may be autonomous for all their local purposes, and yet welded together in an indissoluble mass of the Indian Nation.

There are considerations, however, of certain homogenous units, already existing as such, and conscious of their local integrity, which would not submit to a morcellement for administrative purposes in this manner. But those who aim at a political or economic and administrative reconstruction of India will have to bear in mind the double,—and not always reconcileable—requirement, of the national solidarity and paramountcy over all local considerations, and local

autonomy for all purpose of local administration. Without affecting the local sentiment of strong nationalities within the country, as for instance that of Bengal, we may yet suggest a redistribution of the component autonomous units, in a real Federation of India, which none but a champion of maintaining in tact vested interests, however cumbersome they might be, could object to.

Internal Powers of the Indian Legislatures

Even in maintaining its own procedure, or appointing its own officers, the Provincial Legislatures are under the control of the Governor,—often acting in his descretion.

Apart from the Governor, who is entitled to address them, to send them messages, to recommend legislative measures, and even to issue an authenticated schedule of authorised expenditure voted by the Legislative Assembly,—(and in several cases, even if not voted),— some privileged people are entitled to enter the Chamber and speak in it, even if they are not members of that Chamber. Under Section 64:—

> "Every minister and the Advocate General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote."

Over such outsiders, empowered to address the Chamber and take part in its proceedings, the disciplinary powers of the Chamber must needs be very

lax,—if any; though we may safely presume that such non-members will not be guilty of indecorous conduct while appearing before a Chamber of which they are not full members. The Ministers cannot vote, except, of course, in the Chamber of which they are members in their own right.

Under Section 65, every Provincial Legislative Assembly is required to choose, as soon after its election as possible, two of its members to serve as Speakers and Deputy Speaker respectively. The Speakership has become an elective office ever since 1921; and so there is nothing progressive in this provision. The same rule applies to the President of the Upper Chamber. These are presiding officers, who have certain disciplinary powers as regards the control of the proceedings of the Chamber in which they precide, or at a joint sessions of the two Chambers. They have no ordinary vote; but, in the event of a tie, they have a casting vote, which may determine the issue. The award of the casting vote is, however, conditioned by so many well established conventions, that it is impossible to depend upon the Chair in a Legislative Chamber to help materially in the progress of legislation, or determination of policy.

A Speaker or his Deputy must vacate office [65 (2)], if he ceases to be a Member; or if he resigns his office in writing addressed to the Governor; or loses his seat at an election. When, however, an Assembly is dissolved,* the Speaker does not automatically lose his office, but continues in it until immediately before the first meeting of the Assembly after dissolution.

*As the Upper Chamber is never dissolved, this rule does not apply to the President and Deputy President of that body. All other Provisions are common to the presiding officers of the two Chambers.

Dissolution also acts as vacating office by these officers, but there is no bar to their re-election; and the convention seems to be fairly established that a Speaker or Deputy Speaker, if re-elected by his constituents at a General Election, will be continued in office by a re-election in the Chamber, too.*

The Speaker being considered to be above Parties, his conduct in the Chair must be impartial, and in accordance with the law, rules, customs or usages in that behalf established. Notwithstanding this judicial detachment, the traditions of Speakers in the Indian and Provincial Assemblies have not made that office entirely without any significance in the Constitution of the country. The right of the Speaker to decide points of order, and often the question regarding the admissibility or otherwise of particular Questions, Motions, Bills, invests that dignitary with an importance, which the letter of the law applying to this office does not in any way indicate.

The salary of the Speaker, or the President of the Legislative Council, and of the Deputy Speaker (or Deputy President) is to be fixed by Act of the Legislature; and, until such salary is so fixed it is to be regulated by the Governor. The Chairmen of both Chambers being paid officers of the Chambers, they are but properly made removable from office by a simple resolution passed by a majority of the members present at a meeting at which such motion is to be carried, provided that at least fourteen days' notice has been given to move such a resolution.

*There is, however, no force in the convention, sought to be established by certain interested parties, that a member who has been elected once as a Speaker shall not even be opposed at a General Election, since this seat must be considered beyond Party divisions.

All questions in the Chambers are determined by majority of the votes of the members present, the presiding officer not voting, in the first instance.

A quorum of one-sixth is required by law for valid proceedings in the Lower Chamber, and of ten members present in the Upper Chamber; and if there are less present at any time, the presiding officer may adjourn, or suspend, the sitting. [66, (3)].

The Chambers are entitled to make their own rules of Procedure [84 (1)]. But the Governor is entitled, *in his discretion*, and after consulting the Speaker or the President, to make rules:—

(a) for regulating the procedure of, and the conduct of business in the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion, or to exercise his individual judgment;

(b) for securing the timely completion of the financial business;

(c) for prohibiting the discussion of, or the asking of questions on any matter connected with any Indian State, unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government, or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

(d) for prohibiting, save with the consent of the Governor in his discretion;

(i) discussion of or the asking of questions on any matter connected with relations between His

Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates, of expenditure of, or the asking of questions on, any matter connected with the tribal areas, or arising out of or affecting the administration of an excluded area; or

(iii) the discussion of, or asking of questions on, the personal conduct of the Ruler of any Indian State or a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

Questions, Resolutions, Etc.

Questions and Resolutions are two of the main directions in which the Legislature, in a Parliamentary Democracy, can influence the policy of the Executive, and keep under its control the day-to-day administration of a unit. In this section, severe restrictions are laid upon asking for particular kinds of information, or moving particular resolutions, or initiating discussions on certain subjects. The Governor making these rules acts *in his discretion*, that is to say, he need not even seek the advice of his ministers,—though he is enjoined to consult the Speaker or the President of each House in making rules for the same in these respects. The rights of the Houses to regulate each its own procedure is thus substantially curtailed; and the power of the Governor is exalted in proportion.

Joint Sessions

At joint sittings of the two Chambers, in any Province which has Bicameral Legislature, the Rules of

porcedure are made by the Governor, after consultation with the Speaker and the President. These rules relate to the procedure with respect to joint sittings, as also communications between the two Chambers. At a joint sessions of the two Chambers, the President of the Legislative Council is, by law, [84, (4)] entitled to preside. The Governor in his discretion is entitled to make rules regarding Questions, or discussion on matters relating to external affairs, Indian States, or excluded areas, just as he is entitled to make similar rules in regard to such matters in the individual Chambers.

The Legislature is debarred, by Section 86 (1), from discussing the conduct of any Judge of a Federal Court or of a High Court,—the term High Court including any Court in a Federated State which is given the status of a High Court.

By subsection (2) of Section 86:—

> "If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of the Province or any part thereof, *he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.*" (Italics ours).

The Governor, then, is all powerful, even in regulating the daily procedure and the conduct of business in a Chamber of the Provincial Legislature; and the

province of the latter, or the scope for its effective influence, is proportionately restricted.

Language

Proceedings in a Legislature have to be in English; but rules of procedure may permit in any Chamber, or in a joint sitting any member not familiar with the English language to use another language (85). This is a facility not open to those, who, knowing English, would, as a matter of national self-respect, insist upon using the vernacular language.

Privileges of Members

The constitutional struggle that has been waged in Britain round the question of the Privileges of the Members of the Legislature, individually and collectively, has practically been unknown in India. Such privileges as are accorded to the Legislature collectively, or to the individual members severally, are defined by Section 71, subsection (1) of which guarantees freedom of speech to the members free from any liability in law for any thing said, or any vote given in the Legislature; and also for printing and publishing, under the authority of any Chamber, anything said or done in that body.

The freedom so guaranteed is, of course, subject to the Act and the rules or standing orders made thereunder. So far as freedom from liability in connection with anything printed and published by any person goes, it must be publication under the authority of the Chamber, and so will not protect, against the consequences of any litigation under the ordinary law of the land, anyone who publishes anything without such

authority. It is doubtful, therefore, if even a faithful press report of a debate in the Assembly would protect the publisher from the consequences of any breach of the law involved therein, if the publication in question was not authorised by the Chamber. It may even be questioned if accurate copying from the official report of the proceedings in the Chamber would be privileged,—if that copying is without the authority of the Chamber.

Other privileges may be conferred by Act of the Legislature [71 (2)]; but these, too, if conferred, must be subject to the Act. It is unlikely if such a privilege, as freedom from arrest while on duty in the Chamber, or during its sessions, could be conferred by a Provincial Act upon members of the Provincial Legislature. On the other hand, right to approach the Governor,—or, perhaps even the Governor-General,—may be regulated by such legislation, though it is unlikely to be so legislated for; while the right to receive or hear petitions from the public,—not a right of the Legislature so much as a right of the public,—may be similarly legislated for.

No Legislative Chamber is given the status of a Court, nor are any powers conferred for punishing anybody by a Legislative Chamber, except

> "the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner [71, (3)].

This power of removing or excluding people behaving in the Chamber in a disorderly manner is given against all persons, *i.e.* against members as well as such visitors or Press Reporters as may be found guilty of such

disorderly behaviour. This is necessary for the maintenance of discipline and decorum within the Chamber, and to carry on its work in an orderly manner; but if there is no power to punish,—beyond a simple removal or exclusion,—perhaps the provision may be stultified. But the Standing Orders of the House will, in all probability, afford the necessary right to punish, within the limits laid down by the Rules of Procedure made by the Governor.

Neither the Chambers themselves, nor *a fortiori*, any of their Committees or officers, have any right to compel appearance before them of any individual, or the production of any document considered necessary for carrying out any investigation authorised by the Chamber. But

> "Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a Committee of a Chamber when duly required by the chairman of a committee so to do: Provided that any such Act shall have effect subject to such rules for regulating attendance before such committees of persons who are, or have been, in the service or the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment." [71 (4)].

In this provision an Act of a Provincial Legislature is given a lower status and importance than a Rule made by a Governor, in so far as the protection of particular officers of Government is concerned, or their documents relating to public affairs, if treated as confidential.

The Privileges and obligations laid down in this section apply, under subsection (5), to those people who are, like the Advocate General of the Province, or a Minister who is not a member of a given Chamber, entitled under the law to speak and take part in the proceedings of that Chamber, without voting, as also to members.

The Payment of Members, and cost of Parliamentary Institutions

Section 72 lays down:—

> "Members of the Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislatures, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of the Act applicable in the case of the members of the Legislative Council of the Province."

This section attempts to make a radical departure from the practice hitherto existing in regard to Parliamentary bodies in India. Honorary service,—subject to certain allowances to meet the actual travelling and living expenses to members,—was the rule ever since legislative councils first came to be established in this country. Even when the British Parliament changed its centuries old practice by the Parliament Act of 1911, and accepted the principle of payment of members in contradistinction to that of honorary service, the Indian Legislatures made no such change. Political service has thus been the exclusive preserve of the richer classes hitherto. But, under this section, it will be possible for the Legislatures to allow salaries to their members, if they so enact. Only, in that case

the cost of democratic government, and parliamentary institutions may prove a heavy burden upon the slender resources of the Indian people.

It is not known, as yet, how many Ministers there would be in the Provinces, or what their salaries will be. But suggestions have already been forthcoming to the effect that the Ministers of the people's Parliament cannot, in number, be less than the Cabinets under the Montford scheme; and that, their salaries cannot be lower than those of the Departmental chiefs or Secretaries serving under them. There may, in addition, be Parliamentary Secretaries, who will also have to be paid at such rates as may be commensurate with the prevailing scales of such official emoluments. The Joint Select Committee of Parliament, considering this constitution in Bill form, have estimated the additional cost in the Provinces of the new regime to be Rs. 75 lakhs a year; and if a fixed salary to Members of the Legislatures,—on the model of the British or the French Parliamentary salaries,—were added, the aggregate additional cost may be considerably more. There are to be 1585 members of the 11 Governor's Provinces' Legislative Assemblies, and 263 members of the Legislative Councils, at the maximum, of such Provinces as have a Double Chamber. Even if each of these 1848 members is paid at the rate of Rs. 5,000 per annum, the cost may approximate a crore of Rupees.

Can the country afford this additional burden? True, the principle of honorary public service, if exclusively and rigorously enforced, may not only tie us down to only rich members for such Parliamentary institutions, irrespective of their ability to serve the

country, but may leave the door open to corruption in public life, to economic and political advantages obtained by manipulation of the political machinery; to the invasion of nepotism in our public services, which, all cannot but be severely deplored. As things stand, it is already a matter of complaint, in some quarters, that, even in the most popular Political Party,—the Indian National Congress,—the influence of riches is much more considerable than is desirable for such a popular Party. Election expenses, and expenses of nursing Constituencies, make it inevitable that, on the whole, only rich men could be chosen as Party candidates, entirely regardless of their political knowledge or ability, or even their personal honesty. When the principle of **paid Political Service** is adopted, there would be some hope of the right type of persons being chosen as Party candidates,—though, until the entire social system is recast, and the element of private gain is wholly abolished, the influence of mere riches will not be altogether avoided.

The cost, moreover, is a factor, which may wear a different appearance, if we reconsider the scales of remuneration for such service. It is right and proper that we accept the principle that every labourer is worthy of his hire; and that we should pay for the public service, just as well as we pay for any other type of work. But the scale of such payment need not at all be calculated according to the extravagant and unbearable standards fixed by the foreigner in our country's service; nor in accordance with comparisons with an extraordinarily rich country like Britain. A living wage should be allowed to every body, politician just as much as any other professional public servant,

or worker. But, even if we allow reasonable additional facilities to those who work the Parliamentary institutions, such as travelling expenses, (as incurred, and subject to a prescribed maximum scale) or living charges in a capital city, we need not pay such members, who receive no other emoluments from the public purse, more than Rs. 150 to 200 at most p.m.*

Even so, the cost may be about 50 lakhs beyond the amount now payable; but if it accepts a salutary principle; if it is, at the same time, extended in fixing the salaries of the Ministers,—not in accordance with the scale allowed to their present subordinates, but in accordance with the average income or cost of living in the country,—the burden would be worth shouldering in earnest of the improvement in public life which the change would betoken.

Restriction of official salaries to a predetermined maximum may, it must be added, emphasise the contrast between incomes available in private trade or profession,—at least to the few successful ones at the top. For a time, too great a disparity between the size of private incomes obtainable in trade or profession, and that available in public service may endanger the quality of men offering themselves for such public service,—and, through that, of the general degree of efficiency in the public service. But, in so far as it would emphasise the uneconomic and inequitable class difference, it may very likely provide a stimulus towards social reconstruction on a more equitable basis; and so may, even at the cost of some initial deterioration, be of use in the long run.

*In the Punjab, recently, they have proposed Rs. 1,500 p.a. for members of the Assembly.

Qualifications and Disqualifications for Membership to the Legislature

Under Section, 61, Schedule 5 of the Act, the general qualifications laid down for membership to the Provincial Legislature are;

(i) Being a British subject, or the ruler or subject of a Federated Indian State, or of any other prescribed Indian State with reference to a given province.

(ii) Being not less than 25 years of age in the case of a seat in a Legislative Assembly, and not less than 30 years of age in the case of a seat in a Legislative Council.

(iii) Such other qualifications for voting in the particular constituency as are prescribed for that constituency.

(iv) So far as the communal and other special constituencies are concerned, every candidate must be entitled to vote in the community for which the particular constituency is reserved.

As for the qualifications entitling the person to vote in territorial constituencies at elections of members to a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, they shall be such as may be prescribed, either by an Order in Council by His Majesty, or by an Act of the Provincial Legislature if that body is competent on that subject.

APPENDIX I TO CHAPTER VI: LEGISLATIVE LISTS

LIST I

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment, and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

LIST II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions of a

LIST III

Concurrent Legislative List

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limita-

List I—*contd.*

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wire-

List II—*contd.*

like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the province.

6. Provincial public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in, or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject

List III—*contd.*

tion and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and Judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trust and Trustees.

List I—*contd.*

less, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

List II—*contd.*

to the provisions of this Act and of any Order in Council, made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local

List III—*contd.*

10. Contracts, including partnership, agency, contracts of carriage and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

List I—*contd.*

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wire-

List II—*contd.*

like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the province.

6. Provincial public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in, or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject

List III—*contd.*

tion and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and Judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trust and Trustees.

List I—*contd.*

less, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

List II—*contd.*

to the provisions of this Act and of any Order in Council, made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local

List III—*contd.*

10. Contracts, including partnership, agency, contracts of carriage and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

List I—*contd.*

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The survey of India, the Geological, Botanical and Zoological Surveys of India; Federal Meterological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion

List II—*contd.*

authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffics thereon subjects to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with

List III—*contd.*

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

List I—*contd.*

from India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the respon-

List II—*contd.*

regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests, and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural

List III—*contd.*

Part II.

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance; including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade Unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32 Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of

List I—*contd.*

sibility of railway administrations as carriers of goods and passengers; the regulation of minor railway in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation on tidal waters. Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and

List II—*contd.*

loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain in-

List III—*contd.*

passengers and goods an inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

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List I—*contd.*

other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

List II—*contd.*

dustries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

List I—*contd.*

33. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under

List II—*contd.*

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in

List I—*contd.*

Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the

List II—*contd.*

the Province, and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights subject to any limi-

List II—*contd.*

powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province, or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of

List II—*contd.*

tations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and em-employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

List I—*contd.*	List II—*contd.*
State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before the Committees of the Legislature.	52. Dues on passengers and goods carried on inland waterways.
42. Offences against laws with respect to any of the matters in this List.	53. Tolls.
43. Inquiries and statistics for the purposes of any of the matters in the list.	54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.
44. Duties of customs, including export duties.	
45. Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption;	

List I—*contd.*

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such ex-

List I—*contd.*

tent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, pro-
[illegible]ory notes, bills of lad-
[illegible] of credit, poli-
[illegible]urance, proxies
[illegible]ts.

List I—*contd.*

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

APPENDIX II TO CHAPTER VI

Franchise

As regards persons qualified to vote in any of the constituencies in a provincial legislature, the positive qualifications are that: every such person must be 21 years of age at least, secondly, must be a British subject, or a ruler or a subject of a Federated State, or the subject of any other State prescribed in that behalf; and thirdly, must fulfil the required **residence** qualification.

No one who is declared to be of unsound mind by a competent Court will be entitled to be entered on the electoral roll. No person who is not entered in an electoral roll shall be entitled to vote in any constituency, and everyone entered on that roll shall be entitled to vote in that constituency.

For the Sikh, Muhammadan, Anglo-Indian, European or the Indian Christian constituency, only Sikhs, Muhammadans, Anglo-Indians, Europeans or Indian Christians are entitled to be entered in the electoral roll, respectively, for these constituencies. Such persons will not be entitled to be included in the electoral roll of a general constituency.

Every elector at a general election can only vote in one territorial constituency. Each Province may make its own provisions to prevent persons being included in the electoral roll for more than one territorial constituency, in the same province. This, however, will not apply to electors in territorial constituencies for women, where such electors would be entitled to one territorial vote, and one special vote for women's territorial constituency.

Each Province, excluding excluded or backward areas, is divided into several Constituencies to fill (i) general seats, (ii) Sikh seats, if any, (iii) Muhammadan seats, (iv) Anglo-Indian seats, (v) European seats, if any, (vi) Indian Christian seats, if any. Constituencies which represent classes or interests may, however, be made coterminous with the whole Province. In almost all other cases, the total seats available are distributed, in accordance with the Report of the Delimitation Committee, among the several constituencies made up in the Province each getting one or more seats. India has, as a rule, not yet adopted the Single Member Constituency permitting in each case a straight fight. Nor is there, in the Provincial elections, anything like a principle of Proportional Representation to reassure minorities of a culturally distinct character. In multi-member constituencies, cumulative voting is permitted;

but that seems to be hardly adequate to secure any representation for relatively small Minorities, unless they are living in a compact area, and voting almost entirely on communal or class lines. The latter is such a great evil by itself that one can hardly recommend it as a remedy to cure some of the anomalies of our Electoral system.

Persons declared guilty of corrupt practices and other offences in connection with the elections are not allowed to be entered in the electoral roll, or to vote at any election in a territorial constituency.

Similarly, no person will be allowed to vote at any election in any territorial constituency, if he is, for the time being, undergoing a sentence of transportation, penal servitude, or imprisonment.

As regards women, one woman at least may be entered in an electoral roll for a territorial constituency in virtue of the qualifications of her husband, unless the woman in question re-marries, or becomes disqualified under any of the preceding disqualifications; but a woman so qualified may be allowed to change her territorial constituency, if she changes her place of residence.

As regards property owned, held or occupied, or a demand or assessment made on a person as trustee, guardian or administrator or receiver, such property is not included as qualifying the person concerned for being entered in the electoral roll and entitling such person to vote.

As regards positive qualifications, there are four different types of qualifications, namely,

(1) qualifications dependent on taxation,

(2) property,

(3) literacy, and

(4) military service.

In addition, there are some special qualifications for women, as also in virtue of guardianship.

As regards qualifications of **residence,** it varies in different provinces, from residence in a house in the constituency for 120 days in Madras, to 180 days in Bombay, and varying portions of the year in other provinces. Residence is defined in different ways for different Provinces.

The following specimen qualifications for voters in the provinces of Madras, Bombay, Bengal, Bihar, United Provinces, and the Punjab, are added to exemplify the scope of these requirements:

MADRAS

Qualifications dependent on Taxation

2. Subject to the provisions of Part 1 of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he—

(a) paid tax under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year: or

(b) paid for both the half years of that year to a municipality, local board or cantonment authority in the Province profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924; or

(c) paid for both the half years of that year to a municipality or cantonment authority in the Province property tax under any of the said Acts; or

(d) paid for both the half years of that year house tax under the Madras Local Boards Act, 1920; or

(e) occupied as sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph; or

(f) was assessed to income tax.

Qualifications dependent on Property, etc.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) was on the last day of the previous fasli year a registered land-holder, inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908; or

(b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province; or

(c) was throughout the previous fasli year a kanamdar or kuzhikanamdar or the holder of a kudiyiruppu or verumpattamdar having fixity of tenure, each of

these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929; or

(d) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural constituency, of not less than fifty rupees.

Qualification by reason of Guardianship

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is on the prescribed date the guardian of a minor, who, by virtue of the foregoing provisions of this Part of this Schedule, would have been entitled to be included in the electoral roll for that constituency if he were of full of age and satisfied the requirements of paragraph one of this Part of this Schedule.

Qualification by reason of Literacy

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to be literate.

Qualification by reason of service in H. M.'s Forces

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional Qualifications for Women

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency,—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or

(b) if her husband possesses the qualifications requisite for the purpose of this paragraph.

9. A husband shall be deemed to possess the qualifications requisite for the purposes of the first preceding paragraph if he either—

(a) was assessed in the previous financial year to income tax; or

(b) is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or

(c) occupied for not less than six months in the previous financial year a house in the City of Madras the annual value whereof was not less than sixty rupees, not being a house in any military or police lines; or

(d) was assessed in the Province in the previous financial year to tax on companies; or

(e) was assessed in the Province in the previous financial year to an aggregate amount of not less than three rupees in respect of either or both of the following taxes, namely, property tax or profession tax; or

(f) is registered as a ryotwari, pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees; or

(g) holds under a ryotwari, pattadar or an inamdar a registered lease of land the annual rent value whereof is not less than ten rupees; or

(h) is registered jointly with the proprietor under section fourteen of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value whereof is not less than ten rupees; or

(i) is a landholder holding an estate the annual rent value whereof is not less than ten rupees; or

(j) holds as ryot, or as tenant under a landholder, land the annual rent value whereof is not less than ten rupees.

(Application necessary for Enrolment in certain cases.)

BOMBAY

Qualification dependent on taxation

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the

electoral roll for any territorial constituency if he was assessed during the previous financial year to income tax.

Qualifications dependent on property

3. Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) holds in his own right, or occupies as a tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue; or

(b) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency; or

(c) is a khot or sharer in a khoti village in the constituency, or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than eight rupees land revenue; or

(d) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (d) of this paragraph, the expression "the appropriate value" means—

(i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees;

(ii) in relation to house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees;

(iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

Educational Qualification

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have

passed the matriculation or school leaving examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination.

Qualification by reason of service in H. M.'s Forces

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional Qualification for Women

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if she is shown in the prescribed manner to be literate; or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—

(a) in the previous financial year, he was assessed to income tax; or

(b) he is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or

(c) in the constituency he holds in his own right or occupies as tenant alienated or unalienated land or land on talukdari tenure assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch-Mahals sub-division of

the Broach and Panch-Mahals district or in the Ratnagiri district, or not less than thirty-two rupees land revenue elsewhere; or

(d) he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere; or

(e) he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment, in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and elsewhere, of not less than thirty-two rupees land revenue; or

(f) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value.

In sub-paragraph (f) of this paragraph, the expression "appropriate value" means—

(i) in relation to a house or building in the city of Bombay, an annual rental value of one hundred and twenty rupees;

(ii) in relation to a house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, situate in an area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of twenty-four rupees;

(iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees;

(iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees; and

(v) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Special Qualification for Scheduled Castes

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if either—

(a) he is shown in the prescribed manner to be literate; or

(b) he was at any time during the year ending on the thirty-first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not:

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub-paragraph (b) of this paragraph be qualified to be entered in any electoral roll.

(Application necessary for enrolment in certain cases. Paras 9, 10, 11 omitted.)

BENGAL

Qualifications dependent on taxation

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

(a) has paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year; or

(b) was assessed during the previous year to income tax; or

(c) was during the previous year entered in the municipal assessment book or licence register, or any other authorised register maintained by the corporation of Calcutta, as having paid in respect of that year either directly or indirectly any sum as consolidated rate, tax or licence fee to the corporation; or

(d) has paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than eight annas, or road and public works cesses under the Cess Act, 1880, of not less than eight annas, or Chaukidari tax under the

Village Chaukidari Act, 1870, of not less than six annas, or union rate under the Bengal Village Self-Government Act, 1919, of not less than six annas.

Qualifications depending on property

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if at any time during the previous financial or Bengali year he has occupied by virtue of his employment a house in the Province the annual valuation of which is not less than forty-two rupees.

In this paragraph "annual valuation" means the annual rental of the house as ascertained from any accounts of the employer of the person in question which are required by or under any law to be regularly audited, or, if the annual valuation is not so ascertainable, one-tenth of the annual remuneration received by the person in question for the employment by virtue of which he occupies it.

Educational Qualification

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation examination of any prescribed university, or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed, any other prescribed examination, not lower than a final middle school examination.

Qualification by reason of service in H. M.'s Forces

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional Qualifications for Women

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the

qualifications requisite for the purposes of this paragraph, or if she is shown in the prescribed manner to be literate:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom.

7. In relation to a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(a) he was during the previous year entered in the municipal assessment book as the owner and occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than one hundred and fifty rupees per annum, or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum, and paid during that year his share of the consolidated rate on the land or building; or

(b) he has paid during and in respect of the previous year on his sole account and in his own name not less than twenty-four rupees either in respect of the taxes levied under Chapter XI or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923; or

(c) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty-four rupees was paid in the previous year in respect of the consolidated rate.

Special provisions as to Muhammadan Women's Constituency

13. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

THE UNITED PROVINCES

Qualification Dependent on taxation

2. Subject to the provisions of Part I of this Schedule, and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

(a) was assessed during the previous financial year to income tax; or

(b) was, in an area wholly or partly within the constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

Qualifications dependent on Property

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twenty-four rupees per annum.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable; or

(b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum; or

(c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable; or

(d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary

rent of not less than five rupees per annum is payable; or

(e) in the case of a constituency comprising any part of the Hill Pattis of Kumaun, is resident in those Hill Pattis and, in the constituency, either is owner of a fee simple estate in those Hill Pattis, or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar.

Educational Qualification

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination or an examination which is prescribed as the equivalent thereof.

Qualification by reason of service in H. M.'s Forces

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, noncommissioned officer, or soldier of His Majesty's regular military forces.

Special provision as to Shilpkars in the Hill Pattis of Kumaun

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Pattis of Kumaun if he is a Shilpkar resident in a village in those Hill Pattis, and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village.

Additional Qualification for Women

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if she is proved in the prescribed manner to be literate; or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(a) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum; or

(b) was, in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum; or

(c) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable; or

(d) owns land in the constituency free of a land revenue nominally assessed on the land for determining the amount of rates payable in respect thereof, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum; or

(e) is resident in the Hill Pattis of Kumaun and in the constituency, either owns a fee simple estate situate in those Hill Pattis or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar; or

(f) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such to rent of not less than twenty-five rupees per annum; or

(g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum, or a rent in kind equivalent to not less than fifty rupees per annum is payable; or

(h) was assessed in the previous financial year to income tax; or

(i) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Similar qualifications are also provided for in the Punjab and Bihar.

CHAPTER VII.

PROVINCIAL FINANCE

The problem of Finance in the new Constitution is complicated by several factors. The most important of these are:

(1) The history of the growth of separate provincial purses;

(2) The inclusion of the Indian States in a Federal system;

(3) The growth of new politcal consciousness, and the consequent realisation of new economic possibilities; and

(4) The prevalence of an acute Trade Depression for a number of years.

1. Evolution of Financial Federalism

We need not spend much time in tracing the history of the separate provincial finance ever since the Government of India passed to the British Crown. In the beginning, there was one single Budget for all British India. The income and expenditure collected and defrayed in the Provinces were included in the common Central income and expenditure of the Government of India. It was, however, impossible to control from one centre the innumerable items of expenditure, which were theoretically authorised by the Central Government, but, which, in practice, had to be administered by the Provincial Government. The size and importance of these great units of admin-

istration,—as also the history of some of them in the past,—who had been co-equal Presidencies with the Presidency of Bengal,—also militated against that close and effective control over public expenditure in the Provinces, which was indispensable so long as a single Budget was maintained for the whole of India. On the Revenue side, also, it was impossible for the Central Government in all the various centres in which the several dues and taxes had to be collected to superintend effectively the assement and collection of these taxes, and look carefully into all the innumerable sources of economy or waste, which were connected therewith.

First steps in Decentralisation

As early, therefore, as 1870, the beginnings of separate Provincial Finance were made, by which certain minor Departments were assigned for administration to the Provinces, and the income derived therefrom was also made over to supplement a fixed grant made according to their needs to the Provinces for the administration expenses of these Departments.

Once a beginning was made in this direction, it expanded simultaneously in two directions:

(*a*) on the one hand, in increasing the sources of income left at the disposal of the Provinces; and

(*b*) on the other, of introducing an element of elasticity in the field of these revenues for which the Provinces were made responsible.

An element of fixity was also introduced, in course of time, by placing these arrangements on a contractual basis. The arrangement, made originally for one year, was made semi-permanent in the sense of a five

years' contract, which the Government of India were bound to respect in regard to each Province, subject always to unexpected emergencies of an unforeseen War, or Famine, or any such considerable and disastrous demand upon the resources of the Government of India.

Financial Arrangements under the Reforms of 1919

At the time when the Montagu - Chelsmford Scheme of Reforms was first mooted, Provincial Finance had already become a semi-permanent, separate organization, in which certain departments of administration were conducted almost exclusively by the Provincial Governments, subject to general supervision by the Central Government; and certain sources of Revenue were similarly assigned exclusively to the Provinces. A few important taxes or sources of Revenue were shared between the Central and Provincial Governments, in agreed proportions; and the Central Government retained the right to make additional grants for specified objects of expenditure, on which they retained the right to dictate their conditions to the Provinces.

Borrowing Powers

In regard to borrowing, one common purse was maintained both as regards the Provincial and Central Government, the Central Government being the only borrower on the combined credit of India, and lending to the various Provinces amounts as required, under specified conditions and for approved objects.

The Montford Scheme of Reforms introduced several changes of a radical character in the system of

provincial finance, as it had been developed in the preceding half century. It made practically **a complete separation of the sources of revenue and expenditure** as between Provinces and the Centre; that is to say;

(a) the hitherto existing shared heads of revenue were dispensed with;

(b) Certain sources of revenue were placed exclusively at the disposal of the Provinces for them to levy and develop as they thought proper; while certain others were placed, similarly, exclusively at the disposal of the Central Government.

(c) The same principle was also adopted in regard to expenditure. Certain departments were made over exclusively to the Provincial Governments; and there they were divided between the so-called Reserved and Transferred Departments of Government, the latter of which were placed in charge of Ministers responsible to the Local Legislature, while the former were managed by Executive Councillors, who were responsible only to the Governor and the Secretary of State. Expenditure in connection with these two sets of departments was divided into Voted and Non-voted, *i.e.*, that which could be validly made only by a grant voted by the local Legislature, and that which need not be so voted at all.

The table appended* illustrates the position as it was in 1932-33. Expenditure under the Government of India was under the control of non-responsible Councillors, though there, also, a small proportion of

*See Appendix p. 410.

the total was made subject to a vote of the Legislative Assembly. The power of **certification** reserved to the Governor-General, or to the Governor in the case of a Province, made this limited **power of the purse** entrusted to the Legislature wholly innocuous.

(d) On the other hand, as, by this arrangement, it was found that the Central Budget of the Government of India would show a deficit, even in normal times, it was decided that the Provinces should make each a **contribution**, in accordance with certain settled principles, as recommended by the Meston Committee, in order to make up the deficit of the Central Government. These Contributions were looked upon with the greatest dislike by the Provinces affected, and continued to be a bone of contention until they were abolished in 1926-1927. The power of the Central Government to make specific grants for specific purposes to the Provinces, when funds permitted, was retained, and was utilised in 1934-35 and in 1935-36.

(e) Lastly, the right, under certain conditions, to raise, in the open market, their own loans, was also given to the Provinces, though it must be added that the right was not very frequently exercised even by the richest Provinces. Such borrowings, as have had to be done on account of the Provinces, have been done mainly through the Government of India, who have acted as the Banker for the Provinces.

Financial Changes in the new Constitution

This arrangement has lasted upto the present time, The new Constitution, as contained in the Act of 1935, makes changes, which may well be said only to carry

to the logical conclusion the tendencies already visible in 1920. So far as the Provinces were concerned, the problem of 1935 was, briefly stated, as follows:

THE PROBLEM IN 1935:

Equity in Resources and Obligations as between Units and the Federation

(a) So far as possible, the complete and even a rigid division of resources and obligations, as between the Provinces and the Federation should be made, so that there need be no heart-burning as between one Province and another, or as between the Provinces and the Centre. The system of divided heads of revenue had been abolished in 1919. But the centre taking the Taxes on Income almost wholly was resented, particularly by those advanced industrial and commercial Provinces, which, like Bombay and Bengal, had an increasing proportion of the taxable wealth within the Province in non-agricultural forms. These, therefore, wanted all direct taxation,—on land as well as on other forms of income,—to be at their disposal, especially as the needs of progressive administration were making an almost insatiable demand on their purse.

The principle, therefore, of a complete separation of resources and obligations was, indeed, more easy to enunciate than to achieve, inasmuch as considerable changes had come over the financial position of India as a whole, since 1920-21. For one thing, indirect taxation had assumed, since 1923, very much more important proportions than was the case in the Pre-war Indian Budget. Customs revenue, particular-

ly, had become a most important single source of income for the Government of India, between 1923 and 1935, accounting for as much as 50 crores per annum in round terms. This was mainly because of the adoption of a policy of discriminating protection to Indian Industry. Before the war, the largest single source of income, namely, the Land Revenue, which was assigned, in 1920, exclusively to the Provinces, did not exceed, for all the Provinces together, Rs. 35 crores. The Income Taxes had also increased considerably, both in rate and in yield. Addition to the number of direct taxes was also made in the shape of Super-Tax, or the Excess Profits Tax (subsequently abolished). But none of these could equal the rise in the Customs Revenue, which fell wholly to the Government of India.

Shrinking Provincial Resources

(b) The provinces had got, under the Scheme adopted in 1920, almost exclusively one form of Indirect Taxation for their own use, namely Excise Revenue on intoxicating drinks and drugs; while the Centre got exclusively the other form of Indirect Taxation, namely, Customs. But, whereas the Provincial items of the Indirect Taxation were such that, enlightened public opinion was intent upon progressively reducing it till that item of revenue disappeared altogether, the Central form of Indirect Taxation was such that, the Nationalist Indian public opinion went on demanding a line of policy which steadily increased the yield of that revenue.

The same happened as regards Direct Taxation. While the provincial share of Direct Taxation namely,

Land Revenue, was an item fixed for a number of years, and therefore, inelastic, at any given moment, Income Tax on non-agricultural incomes, which was taken exclusively by the Central Government, was capable of easy expansion by a slight manipulation of the rates charged.

Growing demands of spending Departments

(c) The Provinces, moreover, under the impulse of a Responsible Government, introduced by the Dyarchical system, were becoming more and more conscious of the claims of the spending departments left in their charge. The new Ministers could not but realise the great leeway which had to be made up in almost every Province, before the standard of civilised administration in these departments could be brought up to anything like a desired level. Hence, while the revenue left to the Province was shrinking, or at least inelastic, generally speaking, the departments of expenditure left to them were steadily expanding, and increasing the demands upon the Provincial purse.

Borrowing Powers

(d) The right to borrow for provincial purposes was, though not entirely a dead letter, difficult to exercise in practice, under the conditions and limitations laid down in the Constitution, or the Devolution Rules framed thereunder. The projects of Provincial development,—apart from certain Irrigation Works, as in Sind and the Punjab; or some authorised industries developed, as in the United Provinces—had to be held over for want of funds, or taken up on such a restricted

scale as to be always more burdensome than beneficial.

Deficit Provinces

(e) Add to all this, the institution of certain new Provinces, like Sind and Orissa, the separation from the Government of India of Burma, and the realisation of some other older Provinces being under a steady deficit. The separation of Burma is alone estimated to worsen the Government of India's finances to the tune of 2·75 crores at the least, assuming that Burma pays regularly what the Amery Tribunal has decreed it should pay in regard to her share of the Debt, &c.* The revenues left to these Provinces were unable to meet even their normal expenditure. So some means had to be devised to make all these "deficit" Provinces balance their Budget. In a manner of speaking, almost all the Provinces in British India could well be described as "Deficit Provinces," in so far as, in almost every instance, the standards of public welfare and civilized administration are still very rudimentary. Vast proportions of the people still remain illiterate in almost all the Provinces; sanitation and public health measures are of the most elementary kind; and economic resources are all but undeveloped. In view of these, hardly any Province in India can be called really of a level, where the real deficit could be measured

*Says the Explanatory Memorandum by the Financial Secretary on the Indian Budget for 1937-38. "The separation of Burma thus leads to a net reduction in the revenue of 6,61—3,36 or 3,25, and to a saving in expenditure of 2,35—1,43.

The net cost of separation will, therefore, be 2,33.......... All these figures are of a provisional character. There are many uncertain factors to be taken into account, particularly under the heads "Customs" and "Taxes on Income," and moreover the final material for the calculation of the annuities payable by Burma will not be available until some time after the 31st March."

The figures in this para represent lakhs of Rupees.

by comparing only the revenue and expenditure of these provinces. But even if we thought in terms of revenue and expenditure only, several Provinces, old as well as new, show a steady deficit, which has to be met in one way or another, either by contributions or subsidies from the Centre, or by handing over to the Province certain sources of productive and elastic revenues. As shown more fully in a later section of this Chapter, the aggregate deterioration in the Central Finances, due to the separation of Burma (2·75 crores), subsidies to Deficit Provinces (4·50 crores), and handing over progressively of a part of the Income Tax (6 crores at most) to the Provinces, would amount to over 13 crores per annum, without reckoning the additional expenditure due directly to the institution of the new constitutional machinery, in the Federation as well as in the Provinces, (aggregating 1½ crores), or the irrepressible and irresistible claims of such unproductive services as Defence.

Federating States

(f) This very serious ingredient of the problem of Federal Finance has next been complicated by the introduction of another factor, namely, the proposed admission of Indian States to the new organisation of a Federation of India.

The Indian States had hitherto been regarded as distinctly separate units, for the actual internal administration of which the Government of India did not hold themselves directly, or theoretically, responsible. If, however, and in so far as, the States could be induced to join a common system of governance for the whole country, as for example, a Federation, the problem would be considerably altered.

The States have been claiming, since 1929, at least, a share in the Customs Revenue, because, they urge, a part of it is paid by their people. Those of them who are on the seaboard, and, therefore, able to have a direct overseas trade through their own ports, collect and retain considerable amounts of such revenue, levied at rates laid down by the Government of India, and so yielding vast amounts of income to these States, who use them to develop still further their own ports and transport facilities to make an ever intensifying rivalry with British Indian ports.*

Besides the Maritime States making a considerable hole in the Customs revenue of the Government of India, many of the Inland States also levy local Customs duties of their own, which yield considerable income to these States. The existence of internal Customs barriers like these is incompatible, generally speaking, with the creation of a common, uniform system of government throughout the continent of India, as in a Federation.

If, therefore, these States were to be induced to forego their own separate Customs revenue, by abolishing their own local Customs duties, or by bringing into a common pool the income the Maritime States derive from their own Ports, no doubt the Federal Exchequer would benefit considerably. But on the other hand, for such sacrifices, the States would demand a *quid pro quo*, which would perhaps more than offset the benefits derived from this sacrifice on the part of the States.

*Very few maritime States are, like Cutch, free to devise their own Customs duties.

The States are, no doubt common beneficiaries in the general provision for the Federal Defence, which the new Federal Government would be obliged to make. But they had already some defence provision of their own in many cases. And, in the last analysis, in the eyes of the States, it is the Federal Government of India which is responsible for the National Defence, as also for the maintenance of peace and tranquillity within the country against forces of internal disorder; so that the States might not deem themselves adequately compensated for the sacrifice of their own sources of revenue by being covered in a common measure of Federal Defence.

Solution Proposed

The scheme of Federation set out in the Act of 1935 requires the States to assume their share of the obligation for the Pre-Federation Debt of the Government of India, as also for the Pensions and other contingent liabilities of that body, incurred before the Federation comes into being; and to contribute to the common purse through Customs revenue &c. We need not, however, pursue this matter further at this stage.

Trade Depression and Budget Deficits

This situation was complex indeed, in a very high degree; but it was made infinitely more so by the prevalence of an intense Trade Depression all over the world, and particularly in agricultural countries, like India. The prices of the staple production in this country sagged so heavily after 1929, that the main sources of public income began to suffer heavily. In spite of economies which the Government of India

and the various Provincial Governments had ordered, when depression became too strong and too prevailing to be overlooked, heavy and recurring deficits in the Central and the Provincial Budgets became the rule all over the country.

So far as the Government of India are concerned, even though they appear to have covered part of their deficit caused by the Depression, by adding surcharges to their existing taxes or increasing their rates, by reducing the provision for reduction or avoidance of Debt, and by curtailing expenditure wherever possible, their financial position as a whole cannot be said to have improved substantially. Some of the old productive items of Revenue, like the Railways, have not yet turned the corner, and continue to show recurring substantial deficits. The Railways in fact are, even now, the biggest single source of anxiety to the Government of India; and until and unless they at least make their own Budget balance, without recourse to any financial sleights of hand, there is no hope of any solvent system of Federal Finance being devised in this country.*

The principles, again, governing the Indian Finance Department, in its effort to obtain a net revenue from the so-called Commercial departments of government,—like the Railways and the Post Office, —are obsolete and unproductive; and so they succeed

*Says Sir Otto Niemeyer:—"The position of the Railways is frankly disquieting. It is not enough to contemplate that in five years' time the Railways may merely cease to be in deficit. Such a result would also tend to prejudice or delay the relief, which the Provinces are entitled to expect. I believe that both the early establishment of effective coordination between the various modes of transport and the thorough going overhaul of Railway expenditure in itself are vital elements in the whole Provincial problem." It is interesting to note that the Wedgwood report on Indian Railways dashes all these expectations to the ground.

by their efforts rather in injuring the trade and industry of the country than benefiting Government Exchequer.

A Fall in Customs

Some of the Customs Duties, again, shows signs of sagging, which is not all made up for by the imposition of Countervailing Excise Duties on the products of protected industry within the country. The high rates of duties on articles becoming more and more the indispensable adjuncts of modern industry and commerce,—like motor vehicles,—act like the butcher's knife on the goose that lays the golden egg. The opinion is, therefore, gaining ground in some quarters that the Tariff schdule,—at least in respect of purely revenue duties,—needs a drastic revision with a downward trend. If these ideas materialise, Customs revenue may show a further decline for some years to come, especially if the trade depression continues, and intense economic nationalism prevents its recovery.

Debt Provision

There is, moreover, legitimate anxiety, in quarters which are overimpressed with the extreme need of India to maintain "sound finance," as regards the very restricted provision in the Central Budget on account of Reduction or Avoidance of Debt. The bulk of the debt of the Government of India is, really speaking, unproductive, and would not admit of conversion at the present low rate of interest; and such conversion as has taken place does not make a saving sufficient to insure or indemnify against the contingencies noticed above.

Stagnation in Income-Tax Receipts

While business continues to be depressed, receipts from taxes on income cannot improve, and the entire system of taxation of incomes demands radical reforms which may cause still further loss to the Exchequer. The Provinces, also, demand their share, which, when conceded to the full, would, on the present basis of such tax receipts, involve a loss of 6·5 crores to the Central Government, assuming that the Province should get only ½ of the Income-Tax levied in their own jurisdiction, and, that, too, after 5 years or so.

Threatening Rise in the Defence Budget

The authorities responsible for the Defence of India have held out more than one threat, in recent years, of no further economies being possible in their Budget; but that, on the contrary, considerable additions might have to be made on this account in the near future. Other charges of the Government of India are, similarly, either fixed and guaranteed by the Constitution Act of 1935, or are steadily increasing. Hence the necessary margin of improvement in the general financial position is not visible to make the working of the new Constitutional machinery smooth or fruitful.

Constitutional Provisions Sections—136-180

The same tale is told in the Provinces, though in a minor key. Let us however, study the actual provision made in this behalf in the new Constitution to understand this aspect of its working more correctly.

The authors of the Act of 1935 proceeded to solve the problem before them in a characteristic fashion.

They abolished the still surviving traces of the historical origin of decentralised Provincial Finance, and made a clean division of the sources of revenue and expenditure between the Federation and the Provinces.*

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*The Lists given below, compiled from Schedule VII to the Government of India Act, 1935, indicate the line of division of revenue resources between the Federation and the Provinces:—

Federal Sources

1 Duties of Customs including Export Duties.

2 Excise Duties on Tobacco and other goods manufactured or produced in India, except alcoholic drinks, opium, hemp and other drugs, and toilette preparations containing alcohol.

3 Corporation Tax.

4 Salt Tax.

5 Taxes on Income other than agricultural.

6 Taxes on Capital Value of assets, exclusive of Agricultural land, of individuals and companies.

7 Taxes on capital of companies.

8 Succession Duties, except as to agricultural land.

9 Stamp Duties on Bills of Exchange, Cheques, Pronotes, Bills of Lading, Letters of Credit, Insurance Policies, Proxies, and Receipts.

10 Terminal Taxes on goods or passengers carried by railways or air.

11 Tax on Railway fares or freight.

12 Fees in respect of any matter in the Federal List of Legislation.

Provincial Sources.

1 Land Revenue.

2 Excise Duties on alcoholic liquors, opium, hemp, other narcotic drugs, non-narcotic drugs, medicinal and toilette preparations containing alcohol—manufactured or produced in the province, and countervailing duties on similar articles manufactured or produced in other parts of India.

3 Taxes on Agricultural incomes.

4 Taxes on land and buildings, hearths and windows.

5 Succession duties in respect of agricultural land.

6 Taxes on mineral rights subject to any limitation imposed by a Federal land relating to mineral development.

7 Capitation Taxes.

8 Taxes on Professions, trades, callings or employments.

9 Taxes on animals or boats.

(*Continued on page 325*)

In the resultant situation, they found that several of the Provinces could, from their own resources, never meet the obligations imposed upon them; while several others, even though able to meet the existing burdens from the resources made available to them, would never be able to develop to the full the territories under their jurisdiction.

For these two classes, they suggested an enquiry,—a sort of an Arbitral Award,—at a date as near the advent of Provincial Autonomy as possible,—so as to determine the amount and nature of assistance from the Central Exchequer to carry on the irreducible minimum of provincial administrative machinery. The same authority was also to advise upon the distribution, between the Provinces and the Central authority, of the Income Taxes. These are collected in the Provinces, from the Provincial citizens, or from provincial wealth, and are the most easily expansible item of public income in India, which the Provinces rightly claim ought to belong wholly to them.

(*Continued from page 324*)

10 Taxes on the sale of goods and on advertisements.

11 Cesses on entry of goods for consumption in local areas.

12 Taxes on luxuries, including entertainments, amusements, betting and gambling.

13 Stamp duties in respect of documents other than those assigned to the Federal Government for such taxation.

14 Taxes on goods or passengers carried on inland waterways.

15 Tolls.

16 Fees in respect of any matters contained in List II.

N.B. Some of these are made over to the Local self-governing bodies, and the resources available to the Provinces are to that extent curtailed.

There is, in this division, no proper principle of scientific classification and distribution at work. Not all the Direct Taxes are assigned to the Provinces, nor all the Indirect Taxes to the Federation. The scheme of division is rather the outcome of historical tradition and immediate expediency, than any logical principle of financing for a Federal system.

Let us review now:—

(i) the statutory arrangements made in the Constitution proper, of the division of resources and obligations, between the Provinces and the Federation;

(ii) the provisions to be made under the Arbitral Award for aiding the Deficit Provinces, as also for enabling the more solvent Provinces to undertake schemes of local development, which they cannot if adequate resources are not available to them; and

(iii) the exact significance of the final picture, as it would emerge, after effect had been given to all these changes and reocmmendations.

Statutory Provisions re: Provincial Finance

The Statutory Provisions regarding the scheme of Federal Finance are found in Part VII, sections 136—180, both inclusive, of the Government of India Act, 1935.

These, indeed, are not all the sections of the Constitution Act, which will affect our national finances. A number of the Governors', or of the Governor-General's Discretionary duties, Special Responsibilities, and other privileges accorded to the Public Services, are scattered over several sections in all Parts of the Act. They involve financial liabilities, or restrictions upon the authority of the Provincial Governments, which cannot all be summarised here.

There are, again, provisions in the Part of the Act dealing with the Powers and Procedure of the Legislatures,—both Provincial and Federal,—which may have their reaction upon the system of finance in

the Provinces under the new regime. Finally, the reservations, conditions or limitations of particular Instruments of Accession of individual States may affect the Provinces in their financial administration, the full effect of which we cannot assess in this place.

We must, therefore, confine our summary of the Statutory Provisions only to the terms of Part VII of the Act, and with special reference to the Provincial Finances,—leaving the other provisions bearing on the same subject to be glanced at in passing as they appear to be relevant in their appropriate place.

What are Public Revenues?

Section 136 gives a definition of the revenues of the Federation, and of the Provinces, which is remarkable in that it seems to include not only the normal, recurrent income, but also the extraordinary, non-recurrent receipts, *e.g.*,—borrowed funds, or the proceeds of the sale of property. Says the Section:

> 136. "Subject to the following provisions of this Chapter with respect to the assignment of whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway authority, the expression **"Revenues of the Federation" includes all revenues and public monies raised or received by the Federation,** and the expression "Revenues of the Province" includes all revenues and public monies raised or received by a Province."

"All revenues and public monies raised or received" must mean an extension of the term "Revenues of the State," which is in no way justified by any precedent, nor explained by any specific reason adduced

to support such an extension. Under the Act of 1919, the corresponding expression could not possibly be extended to include anything but the normal, recurring proceeds of taxation, fees, or the profits of State enterprise; certainly not the loans, borrowed monies, or capital sums obtained in one way or another. The only explanation of this very unsual definition might be found in the apprehension the framers of the new Constitution seem to have entertained of the ability of the new Federation, or its autonomous Provinces to bear the burdens imposed upon them, or to make contributions in aid of Britain's Imperialistic adventures; and the consequent necessity they must have felt of securing,—at least so far as the interest on British investments, the salaries and pension of British public servants in India, and the continued maintenance of the British garrison in India were concerned,—adequate resources in the hands of the Executive to meet those obligations, punctually and regularly. But those are matters of Imperial policy as guaranteed by the special powers and responsibilities of the executive, which will not help the cause of effective autonomy in the Provinces.

The foregoing remarks will be understood in their proper perspective, if we read, along with Section 136, section 150 of the Act. That section provides:—

"(1) **No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India.**

(2) Subject as aforesaid, the Federation or a Province **may make grants for any purpose**, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws."

We have already commented upon the contrast this provision affords with the existing law on the subject, in another part of this work; and so need not linger more on that topic, beyond pointing out the light it casts upon the interpretation of Section 136, as indicated above. When all the income, whether in the nature of capital receipts or revenue proper, are pledged, as it were, for "the purposes of India",—even if the particular purpose in any given case is not one on which the Legislative authority for the entity is entitled to make laws,—and, therefore, with respect to which the ordinary constitutional executive have no authority to act,—these extra-legal purposes can be financed out of "the revenues of India" by the supreme executive officers,—Federal or Provincial. What check can there then be on the spending propensities of the executive?

Method of Central Collection

There are some sources of revenue, the rates of which are left entirely to the Provinces to regulate from time to time; while there are others, the net proceeds of which are to be distributed among the Federating Units, which are to be levied and collected by the Federal Government. Under Section 137,* duties in respect of:

(i) succession to property other than agricultural land;

*137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative Last, terminal taxes on goods or passengers carried by railway, water or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty, or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenue of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and

Continued on page 330)

(ii) Stamp duties mentioned in item 57 of the Federal Legislative List, *i.e.*, stamps on commercial documents;

(iii) Terminal taxes on goods or passengers carried by railway or air; and

(iv) Taxes on railway fares and freights.

are to be levied and collected by the Federation. But their net proceeds are to be distributed between these Provinces and the Federated States, if any, within which those duties or any of them are leviable in a given year. The process of distribution is to be regulated by principles laid down in an Act of the Federal Legislature. An important proviso to this Section lays down:

> "That the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes, and the whole proceeds of any such surcharge shall form part of the revenues of the Federation."

The justification of this device of levying and collecting given taxes as from a common centre, and distributing the proceeds according to predetermined principles, lies in the desirability of uniform rates and methods of tax collection, and economy in administration arising out of such uniformity. On the other hand, the right reserved to the Federation to impose surcharges is justified by the need to place at the disposal of the Central Government additional sources of

(*Continued from page 329*)

those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature:

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

incomes, since that body will have under its charge items of expenditure that are heavy in incidence, outside the scope of ministerial responsibility, and cannot always show a concrete return for the amounts spent upon them.

Exclusive Provincial Resources

It must be noted, however, that against all these duties, or taxes, there are complementary items, which are left exclusively to the Provincial Government. *e.g*, under item 51 (Stamp duties) of the Provincial List in Schedule VII, or item 57, Part I of the concurrent List; or item 43 in the provincial List regarding succession to Agricultural Land, Item 18 in the Provincial List is particularly interesting, inasmuch as it includes all means of communication and transport, other than Federal Railways and Airways. Presumably the Provinces are entitled, not only to legislate for these other means of transport and communication, but also to levy tolls, dues, or taxes, exclusively for their own use, on such means or vehicles of transport as is indeed laid down in List II of Schedule VII—within the Province, *e.g.*, motor lorries or buses, by means of their registration fees, licence of drivers, road tolls, or other forms of such taxation. **If the road transport could be effectively organised by the Provinces, and operated as a provincial enterprise in aid of their own revenues, it could make an excellent rival to the railways.** The latter, already in a state of acute depression, would suffer still more because of such rivalry from the different Provinces. There is considerable room for conflict of interest, and also for overlapping of jurisdiction, in this matter. Needless to add, under item 54 of the Provincial List, the Provincial authorities would

be fully entitled to exploit such sources of revenue for their own benefit, even if that should prove detrimental to Federal Revenues.

Fate of the Income Tax Receipts

The most important section, perhaps, of this part of the Act, is 138, which relates to the division of the Income Tax as between the Federation and the Provinces. The Federating States would not agree to burden their subjects in respect of this taxation,—except in case of extraordinary emergency. In that event surcharges may be levied exclusively by, and for the benefit of, the Federal Government. The proceeds, again, of taxes on income derived from Federal securities, or Federal government salaries and emoluments, as also those in the Chief Commissioners' Provinces, would, similarly, belong to the Federal Exchequer. It is only for the purely Provincial revenue derived from this tax, *i.e.* on income in the Province itself, that a division may take place, under certain conditions, and upto a prescribed maximum amount, of the proceeds of the tax.

Let us first consider the text of the Section:—

"138(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and in those States, in such

manner as may be prescribed: Provided that — (a) the percentage originally prescribed under this sub-section shall not be increased by any subsequent order in Council; (b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes, and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding sub-section, the Federation may retain out of the monies assigned by that sub-section to Provinces and States — (a) in each year of a prescribed period such sum as may be prescribed; and (b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction: Provided that—(1) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council; (2) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial, and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis

as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section:—

"taxes on income" does not include a corporation tax;

"prescribed" means prescribed by His Majesty in Council;

"Federal emoluments" includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income-tax is chargeable.

It may be noted that the *"net proceeds"* of this taxation is defined by section 144, which reads as follows:—

(1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or *duty*, or any part of any tax or duty, in or attributable to any area, shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other *express* provision of this chapter, an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner

at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any incidental or ancillary matters."

Secondly, only taxes on income other than agricultural income are those assigned, to the Central Government, a part of which, to be prescribed by Order in Council, has to be assigned to the provinces.

Super Tax and Surcharge

It may be questioned whether this includes Super-Taxes on income, since, under item 54 and 55 of the Federal Legislative List, Schedule VII, only taxes on income other than agricultural income (54), and taxes on the capital value of assets, exclusive of agricultural land of individuals and Companies; and taxes on the capital of Companies (55), are left to the Central Government; while under item 41 in the Provincial List, taxes on agricultural income, as also taxes on professions, trades, callings and employments, (item 46) are left to the Provinces. But Super Taxes are nowhere mentioned by name. It may be that under subsection (1), paragraph (b) of the proviso, of Section 138, the Federal Legislature being entitled to levy a surcharge on income taxes for Federal purposes, the need for a super-tax does not arise. But a corresponding right of the Provinces to increase for provincial purposes the amount of the yield, by adding to the rate of the tax on the income taxed in the Province, is not provided for. It does not seem to be the intention of the Legislature to leave this right to the Provinces, as the Report of the Joint Select Committee

of Parliament on the Government of India Act of 1935 makes evident.*

Taxation of Agricultural Incomes

Thirdly, taxes on income contemplated in Section 138 are distinctly those which are exclusive of taxes on agricultural income. It is left to the Provinces to impose such taxes within their jurisdiction on Agricultural Income if they thought fit. And these taxes, if imposed, would be in addition to the Land Revenue. Where land has been permanently settled, and a fixed revenue demand is made in perpetuity, the Governor of the Province concerned has special instructions to consider carefully any proposal for levying income taxes on agricultural income derived from land which has been permanently settled. For all other purposes, both the Land Revenue and the additional tax on Agricultural Incomes within the Province may be enjoyed by the Provinces. But whether any Province would derive any considerable benefit from such an imposition is seriously open to question. The reason is quite simple. Even if there be land in the non-permanently settled Provinces, the income from which can fairly be made assessable to income-tax, the basic principle

*Para 257 of the J.P.S.C Report says:—

"The White Paper proposes that a Provincial Legislature should be empowered to impose a surcharge not exceeding 12 1/2% on the taxes levied on the personal income of persons resident in the Province, and to retain the proceeds for its own purposes. There is, we understand, a considerable difference of opinion in India on this suggestion. It might lead to differential rates of tax on the inhabitants of different Provinces; and although a limit would be set to the possible differences, this is in itself undesirable. The rates of taxes on income are likely also to be sufficiently high to make it difficult to incr[illegible] the rate by way of surcharge, and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand, the proposal would undoubtedly give an elasticity to provincial revenues, which would be very desirable until the transfer of their share of the income tax is completed. **But, after balancing the considerations on either side, we are on the whole not in favour of it.**"

of such taxation of incomes would require exemption from taxation of a minimum for subsistence. In the ordinary Income tax to-day, Rs. 1,500|- per annum is thus exempted. This principle will apply to so much even of the rest of land revenue from the small farmers that there can be no substantial increase of income from this source, at least in the provinces where the Land Revenue is settled for a term of years, and not permanently.

Succession Duties

We do not, of course, in this connection reckon Succession Duties on agricultural property, or other taxes on land and buildings, which are assigned to the Provinces. A good many of these are made over by the Provinces to the Municipalities or District Boards under them. So, too, with regard to taxes on trades and professions, callings and employments (item 46 in the Provincial List). But these may be utilised even in the form of a fixed charge on the incomes derived from such trades, *etc.*, for provincial purposes. It is impossible to say how much additional income any given Province would derive from such sources; but the moment they go beyond municipal or local limits, such taxation, if resorted to, will have a deleterious effect upon the general prosperity of the Provinces concerned, especially if neighbouring Provinces do not impose such handicaps upon trades and professions, *etc.*, within them.

Federal Emoluments

Fourthly, the wording of this section also does not make it clear if the Federal Government are to retain taxes on the income derived from the securities of the

Federal Government for their own purposes. The only exceptions made by the section are in respect of proceeds "attributable to Chief Commissioner's Provinces or to taxes payable in respect of Federal emoluments." And 'Federal emoluments' are defined in sub-section (4) of the same section, so that we cannot include therein any interest on Federal Government securities.

It is similarly not clear whether income tax on the interest on Provincial Government securities, even in those provinces in whose case the provincial debt has not been cancelled by the Government of India, will belong to the Provincial Government. This seems to be a surprising omission, and does not seem to be made up for either by section 155, which allows the Government of a Province, or the ruler of a Federated State, to be exempt from "Federal taxation in respect of lands or buildings situate in British India, or income accruing or arising or received in British India."

All Proceeds Retained by Centre

The Federation is entitled, under sub-section (2) of this section, to retain for its own purposes, from the monies assigned to the Province or the Federated States under sub-section (1), a certain proportion; for a given period; and, after the prescribed period, a certain smaller proportion. The actual amount and percentage to be thus distributed amongst the Provinces and States is determined by the Award of Sir Otto Niemeyer, which is noticed more fully below.

While the taxes on income are not ordinarily applicable to the Indian States, the surcharge on

income tax levied for Federal purposes is payable by the Indian States as well, except that particular States may agree to make specific contribution in lieu of the surcharge being levied and collected in their jurisdiction.

Salt, Federal Excise, and Export Duties

The same may be said of the provisions of section 140 relating to duties on Salt, Federal Excise Duties, (such as those levied on sugar, matches, and petroleum) or Export Duties. The proceeds of these will normally belong to the Federation. But it is left to the Federal Legislature to provide by an Act that "there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty." Under this section, provision has to be made, for instance, for the allocation to the jute growing provinces for a share in a jute export duty, levied by the Federal Government according to a scheme recommended by the Award of Sir Otto Niemeyer.

140. (1) "Duties on salt, Federal Duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding sub-section, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein."*

Federal Contributions

Certain provinces are entitled, in virtue of section 142, to contributions being made from Federal revenues in accordance with the Orders of His Majesty's Government, as *grants-in-aid* of such provinces.†

The Grants-in-aid thus fixed in the first instance by the Award of Sir Otto Niemeyer, are noticed below.

Borrowing Powers of the Provinces

The borrowing powers of the Provinces in the new Constitution are contained in sections 162.‡ Bor-

*The Niemeyer Award allows this proportion to be raised to 5/8ths for the benefit of the Provinces.

†142—"Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces:

Provided that, except in the case of the North West Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase be made."

‡163.—(1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits if any as may be so fixed.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed

(*Continued on page 341*)

rowing is, under the terms of these sections, an executive power; but the Provincial Legislature may by Act prescribe the limits of such borrowing, and lay down the nature of the guarantees that can be offered for such loans. The main and perhaps the only security for facilitating borrowing by any Provincial Government, is, of course, the Provincial Revenue. In view, however, of the heavy indebtedness* of many a leading Province, and in view of the immense field for provincial development needing capital, it may be questioned if this power will be found adequate.

Provinces may borrow in the open market or from the Federal Government. The latter are authorised to make loans to the Provinces and impose their own con-

(Continued from page 340)

under the last preceding section are not exceeded, give guarantees in respect of making loans raised by any Province and any sums required for the purpose of making loans raised by any Province, and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.

A consent under this sub-section may be granted subject to such conditions, if any, as the Federation may think fit to impose.

(4) A consent required by the last preceding sub-section shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal or consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final.

*According to Appendix 3 of the Niemeyer Award the indebtedness of the following Provinces was:

	(In Rs. Crores.)
Madras	9.781
Bombay	23.253
Sind	4.552
U.P.	26.471
Punjab	17.914
C.P.	3.786

ditions. The Provinces may not borrow outside India except with the consent of the Federation, which may impose such conditions as they deem necessary to guarantee the safety of the loan, and the due payment of the interest thereon. Consent cannot, indeed, be unreasonably refused; but what is reasonable and what is not reasonable refusal will be a matter to be eventually decided by the Governor-General in his discretion. As the maintenance of the financial stability and credit of India is made a special responsibility of the Governor-General [Section 12 (1) (*b*)], it may be presumed that the Governor-General and the Federation will be duly cautious in such matters. It is likely, however, that in practice the Provinces,—at least the newer or weaker ones among them,—would prefer to borrow from the Federation; but, in that case, their liberty of action may be considerably restricted, notwithstanding the injunctions of sections 16 (3) (4).

Reservations

Sections 141 and 143 contain provisions of a procedural character, and also certain savings, which, while they do not materially affect the financial position of the Provinces, nevertheless indicate the reservations made on the financial powers of the Provincial Legislatures, that may have important after-effects. These sections are:

141. (1) "No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to Provinces or States, or which imposes any such

federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression "tax or duty in which Provinces are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces."

143. (1) Nothing in the foregoing provisions of this Chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area, under a law in force on the first day of January, nineteen hundred and thirty five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

That power and authority of the Governor-General —and not Federal Government—extends to seeing that all proper economies are made in the Federal Budget, before recourse could be had to new taxation, or increased rates in existing taxes. But on this aspect of the matter we shall comment in the companion volume to this Monograph.

It is obvious that sub-section (2) of 141 is intended to satisfy the Governor-General that all necessary economies have been made in the provincial expenditure; while, in the case of the taxes, duties, cesses or fees which were leviable uptil now by any local authority, they are permitted to be levied by the same authorities as heretofore.

Niemeyer Award

Under the foregoing provisions, and in order to start the Provinces under the new Constitution on an even keel, financially speaking, the British Government appointed Sir Otto Niemeyer to give a sort of Arbitrator's Award as to:

(1) The period within which the distribution of Income Tax receipts collected by the Federal Government should be made among the Provincial Governments, and the proportion of such distribution;

(1a) Proportion of Jute Export Duty to be assigned to the Jute growing Provinces.

(2) The amount and mode of offering further subvention from Federal resources to such of the Provinces as were found to be deficit Provinces.

Sir Otto approached his problem on the assumption that—

"At the inauguration of Provincial Autonomy, each of the Province should be so equipped as to enjoy a reasonable prospect of maintaining financial equili-

brium, and, in particular, that the chronic deficit into which some of them had fallen should be brought to an end."*

He, accordingly, commenced with examining the present and prospective financial position of the Provinces; and, on the results thereby revealed, proceeded to determine the amount of special assistance necessary in each case. That position is epitomised in the following statistics given in Appendix II B of his Report:

(N. B. Figures are in Lakhs of Rupees)

Province	Rev.	Exp.	Rev.	Exp.	Rev.	Exp.
	1930-31		1935-36		1936-37	
Madras	16,84	17,90—1,06	15,72	16,04—32	15,90	15,90
Bombay	13,81	15,62—1,81	14,80	15,08—28	12,04	12,03
Bengal	9.96	11,41—1,75	11,43	11,58—15	11,49	11,91
U. P.	11,97	12,88— 91	11,79	11,84— 5	11,71	12,45
Punjab	10.56	10,99— 43	10,46	10,57—11	10,80	10,78
Bihar & Orissa	5,27	6,06— 79	5,54	5,61— 7	4,70	4,82
C. P.	4,70	5,14— 44	4,56	4,81—25	4,81	4,90
Assam	2,44	2,79— 35	2,36	2,83—47	2,37	3,00
N.W.F.†			1,70	1,76— 6	1,70	1,80
Orissa†					1,63	1,63
Sind†					3,13	3,13

This reveals a position of permanent deficit in almost every Province, new or old; and Sir Otto calculated their aggregate deficit to be about 4·50 lakhs. Upto this amount assistance would need to be given to the several Provinces,—as follows (in lakhs of Rupees):—

Bengal	..	75	
Bihar	..	25	
C. P	..	15	
Assam	..	45	+ 7 on account of Assam Rifles
N.W.F.	..	110	
Orissa	..	50	+ 19 non-recurrent
Sind	..	105	+ 5 lakhs non-recurrent pro-
U. P.	..	25	gressively for five years
Total		450	

*Para 3, of his Report.

†These Provinces' revenues include the subvention from the Government of India already being given to them. Omitting that their deficit would be much greater.

The Central Budget

How was this amount to be found? The position of the Central Budget, as revealed by the corresponding figures was:—

	Revenue	Expenditure	Surplus or deficit (in Lakhs Rs.)	
	Rs.	Rs.		
1930-31	1,24,60	1,36,18	–11,58	
1931-32	1,21,64	1,33,39	–11,75	
1934-35	1,25,10	1,20,15	4,95	
1935-36	1,24,37	1,21,95	+ 2,42	(Revised Estimates)
1936-37	1,22,77	1,22,70	— 7	(Budget Estimates)[1]

The 1934-35 figure is given before providing Rs. 2,81 lakhs for rural uplift, and other special grants totalling Rs. 178 lakhs; that for 1935-36, before providing Rs. 45 lakhs for buildings in Sind and Orissa, and Rs. 197 lakhs for revenue reserve. Expenditure in both 1935-36 and 1936-37 includes a grant of about Rs. 1,90 lakhs to the jute-producing provinces, and a subvention of Rs. 100 lakhs for the N.W.F. Province. Expenditure in 1936-37 includes in addition a grant of Rs. 108 lakhs in Sind, and Rs. 50 lakhs for Orissa.

The Central Government resources however, are not so plentiful as to provide, from the normal revenues, all this extra contribution to the Provinces.

Present Magnitude of the Customs and Income Tax

Its main revenue resources indicate a growing tendency to diminishing returns, which those responsible

[1] According to the Budget Estimates for 1937-38, Provincial Autonomy, as definitised by the Niemeyer Award, would involve a reduction in Central Revenues of Rs. 51 lakhs, and an increase in the Central Expenditure of Rs. 134 lakhs, or a total cost to the Centre of Rs. 185 lakhs.

for the finances of India do not seem to have realised in full. The Customs revenue, aggregating perhaps 55 crores, is the result of a combination of productive (or revenue) tariff with protective duties, which must diminish in proportion as: (a) the claims of the consumers come to be appreciated and given effect to; and (b) in proportion as the protection granted to indigenous industry proves effective and reduces imports from abroad of articles thus protected. The latter tendency is decidedly asserting itself in the case of such articles as sugar, where the domestic product is rapidly cutting out the foreign importer.

True, decline in the Customs revenue due to such factors is sought to be counteracted by imposing Countervailing Excise Duties; but these will neither indemnify the Central Exchequer completely against the loss in Customs revenue; nor would such measures —taxing directly a country's local industry,—be popular. The Niemeyer Report, again, awards $\frac{5}{8}$ths of the Jute Export Duty to the jute growing provinces, which would involve a further loss of revenue to the Central Exchequer. There is a fundamental objection to the taxation of exports by the Central Government, which is voiced emphatically in the United States Constitution by a specific article forbidding the Federal Government to impose any such duty. That sentiment is growing rapidly in India. The claims of the consumer may not receive attention for some years to come, so far as the present high duties on many articles of luxury are concerned. But the range of articles on which such duties are possible to impose is limited; and so the chances of recouping for the loss caused by protective duties are exceedingly slender.

Incidence of Direct Taxation

As for the Income Taxes, Sir Otto Niemeyer observes:

> "After the abolition of tax on the smaller incomes, and the two successive reductions in the rates imposed in 1931, the rates of Income Tax and Super Tax in India, especially on the higher incomes, are by no means excessive. The general scheme of Indian Taxation (Central and Provincial) operates to relieve the wealthier commercial classes to an extent which is unusual in taxation schemes; and there would be no justifiable ground of complaint if a slight correction of this anomaly were maintained. The assignment of taxes on Income is the main method of assisting Provincial Finances contemplated by the Government of India Act; and if the remaining surcharge were maintained, it would materially contribute to the early receipt by the Provinces of additional resources."*

Even if we accept this reasoning *in toto*, we must point out: (i) that the Central Exchequer would suffer, on the basis of present rates, a decline of 6·5 crores when the full percentage of income taxes proposed to be made over to the Provinces is attained. (ii) Besides, the system of taxing incomes in India admits of considerable reforms,—abatement in respect of married persons' income, and that on account of minor children being maintained out of such incomes, which if given effect to, would substantially reduce the tax receipts. (iii) The same must be said of the claim of the business community for making the basis for assessing incomes to taxation on a three years' average of earnings or profits, and not each year's income separately without ever allowing for business losses. If granted, this concession, modelled on the

*Para 31 (1) of the Report.

British practice, would, according to the present Finance Minister of India, mean a heavy loss of revenue. (iv) Finally, the Federal Government have been precluded from taxing agricultural incomes, especially those of a larger size. This exemption from taxation is being partially abandoned in the new Constitution, in so far as the Provincial Governments are empowered to impose such taxation, if they so desire. But it may be questioned, whether, outside Bengal, the United Provinces, and Bihar, this would mean any real accretion to the Provincial resources,—especially if the Provincial Governments are compelled, by the sheer force of logic, to exempt from their Land Revenue demand all smaller incomes from land coming within the so-called subsistance minimum everywhere exempted from taxation.

(v) Another exemption from income taxes, allowed by the Government of India today, and apparently maintained by the new Constitution, is that in connection with the incomes earned in India, but paid abroad,—*e.g.* leave and pensions paid to Government servants residing abroad; or interest on sterling securities. **There is no justification for this exemption.** If the Government were to impose equal taxes on all incomes earned or accured in India, there may be a gain of 3 to 5 crores per annum to the Central Exchequer. Many of the losses apprehended in the Income Tax receipts on account of the factors mentioned above would be wiped out by this one reform, if only the Government of the country had courage or sympathy enough to tackle such a problem. It is, however, one proof of the purely exploiting nature of the present Imperialist regime in India, that they would never

consent to such obvious reforms in their revenue system.

The introduction of the Corporation Tax or Succession Duties on personal estate may make up for the loss likely to result from these sources in the Central Budget. But the items are yet too new to estimate their yield correctly.

Expenditure Side

On the spending side, the provision for reduction or avoidance of Debt of the Central Government has since 1931-32 been reduced by 3 crores. Though there may be some savings on account of conversion of the old high-interest bearing Debt into lower interest bearing obligations, the possibility of further economy through that means is limited. The Defence Budget promises considerable expansion in the near future, if only because of the continued state of tension in Europe.

The Railways, moreover, continue to be a source of considerable deficit, which has aggregated over 62 crores in the last 6 years, and which has been so far met by loans from the Reserves.*

The spending Departments in the Provinces have, likewise, an infinite capacity for expansion, so that the deficit calculated above is the minimum, on the existing standards of civic amenities only.

Nevertheless Sir Otto considered that the above measure of assistance could be rendered from the Central revenues to the Provinces, either (i) by foregoing,

*In 1936-37 they were reported to be making a small profit of about 15 lakhs; while in 1937-38 the figures of gross receipts have been showing a constant improvement. On the other hand, the accumulated deficit of Rs. 62 crores, in so far as it constituted a debt against the Railways, is by law wiped out.

in given cases, the claim of the Central Government on account of interest on loans advanced to the Provinces concerned; or (ii) by means of cash contributions for a given number of years, to meet the present deficit in particular Provinces; while for (iii) the developmental needs in general of each Province, a proportion of the Income Tax receipts could be made over to the Provinces.

Sir Otto, making his award after careful consideration, held that—

> "the initial prescribed period under Section 138 (2) (a) being five years, the prescribed sum which during that period the Centre may in any year retain out of the assigned 50 per cent., shall be the whole, or such sum as is necessary to bring the proceeds of the 50 per cent. share to the Centre together with any General Budget receipts from the Railways upto 13 crores, whichever is less."*

For the first quinquennium of the new Constitution, there seems little hope of the Federal Government being able to dole out any portion of the Income Tax receipts left in their charge. And even for the next 5-yearly period, Sir Otto's recommendation may be given effect to only progressively; and that, too, if no other emergencies occur. The arbitrator makes the division of the Income Tax receipts among the Provinces on the combined basis of population and residence of the income-tax-payers; and lays down the following proportions to be refunded to the several Provinces:—†

*Para 30 of the Report.

†Cp. Para 34 Op. Cit.

Province	Proportion c Income Tax Returned.
Madras	.. 15
Bombay	.. 20
Bengal	.. 20
U. P.	.. 15
Punjab	.. 8
Bihar	.. 10
C. P.	.. 5
Assam	.. 2
N. W. P.	.. 1
Orissa	.. 2
Sind	.. 2

Needless to add that this percentage applies only to the Provincial share, which is half of the total income tax receipts collected by the Central Government from the several Provinces. If the States come into the same scheme, they, too, would be sharers in the residue, and a minor adjustment may have to be made on their account. But the States are not primarily liable to the Income taxes; and the Federal Government is free to impose a surcharge on the normal Income Tax rates for exclusively Federal purposes, of which the States as well as the Provinces will have to bear the burden.

This arrangement is open to the serious criticism that it is creating considerable provincial jealousies, since those Provinces which have managed their finances in the last 15 years more or less economically, seem, like Bombay, to be penalised; while those others, which, like Bengal, do not appear to have applied the same vigilance in their financial management, appear to have been specially favoured. This is, no doubt, a reflection of the growing provincial sentiment which is not always in the best interests of the national solidarity. But when such grounds are offered for its manifestation, it is impossible always to repress such sentiments emanating,—particularly as the benefit derived from such adjustments does not really go to the masses of the people, but falls largely to the share of vested interests.

Cancellation of Provincial Debts

Sir Otto has also suggested cancellation of all debt contracted with the Central Government prior to

April 1, 1936, in the case of 5 Provinces. In this way, those units would obtain relief as shown below on their expenditure side.

Bengal	..	Rs. 33 lakhs annually;
Bihar	..	„ 22 „ „
Assam	..	„ 15½ „ „
N. W. F.	..	„ 12 „ „
Orissa	..	„ 9½ „ „

As regards the Central Provinces, the relief on this account is confined only to the deficit debt as on March 31, 1936, and approximately 2 crores of pre-reform Debt,—giving a total relief of Rs. 15 lakhs, in this way.

Jute Duty

Under the head of Jute Export Duty, Sir Otto recommended that the percentage of that income left to the jute-growing Provinces should be raised to 62½%; and so yield a further addition to the income of the Provinces noted below of the figure shown against each of them.

Bengal	... ..	Rs. 42 lakhs.
Bihar	.. ..	„ 2½ „
Assam	.. ..	„ 2¼ „
Orissa about	.. ..	„ ¼ „

"The result will be" says Sir Otto, "after allowing for the advantages derived from debt cancellation, to complete the required assistance except in the case of Assam, N.W.F. and Orissa, which will still require, 30, 100, and 40 lakhs respectively. In addition, there remain the special cases of the United Provinces and Sind, in which, for different reasons, the method of adjustment by debt cancellation was not thought appropriate."*

*Para 23 of the Report.

Specific Relief

In those cases, therefore, he recommended the following grants under Section 142:—

United Provinces	Rs.	25	lakhs	for a fixed period of 5 years.
Assam	„	30	„ +	Rs. 7 lakhs on account of Assam Rifles.
N. W. F.	„	100	„	subject to reconsideration at the end of 5 years.
Orissa	„	40	„	with 7 lakhs additional in the first year, and 3 additional in each of the next 4 years.
Sind	„	105	„	for 10 years, with 5 lakhs additional in the first year, then falling as provided until the grant ceases entirely with the extinction of the Barrage Debt.

The aggregate relief, given under the Niemeyer Report, to the several Provinces, by means of debt cancellation, or specific revenue contribution, or direct subsidy,—without speaking of the accretion to the revenue resources of the Provinces due to concessions on account of the Income Tax receipts,—is summed up in the Table given on page 355.

* Province.	Total relief granted.	Debt Cancellation	Contribution from specific revenues.	Subsidy	Remarks
Madras } † Bombay }	...	...	...	...	For both these Provinces slight relief may be found in the readjustment of Balances.
United Prov.	25	...	...	25	*Apart from 7 lakhs for Assam+19 lakhs non-recurrent + 5 lakhs non-recurrent for 5 years.
Bengal.	75	33	42	...	
Bihar.	25	22	2½	...	
Central Prov.	15	15	...	...	
Assam.	45*	15½	2¼	30	
N. W. F.	110	12	...	100	
Orissa.	50*	9½	¼	40	
Sind.	105*	...	...	105	

* This figure may possibly be regarded as 4.9 too high.
Appendix 3 to Para 19 of the Niemeyer Report.

† The adjustment on account of Provincial Balances and Debts results in the following relief to named Provinces on the 1936-37 Budget as under :

Figures are in Lakhs of Rupees.

Province	Total Debt to be Consolidated		Net benefit on Debt Charges.
Madras	978.1 ...	...	26.2
Bombay	2325.3 ...	...	14.5*
Sind	455.2 ...	...	0.7
U. P.	2647.1 ...	...	12.7
Punjab	1791.4 ...	...	1.7
C. P.	378.6 ...	...	20.9

Criticism of the Niemeyer Award

The Niemeyer Report is open to the most serious objection in this: that it has simply not looked at Provincial Finance collectively at all. It has merely made the existing standard of administration in given Provinces as its starting point and culminating edge. The deficit it has concerned itself with is really the existing deficit. It has, therefore, offered a relief to certain Provinces, which, without really enabling the latter to effect any substantial good to those units, would only serve to weaken the Central Purse. Throughout its closely reasoned pages, one seeks in vain for a glimpse of that larger vision, which would think of the 9 out of 10 persons still illiterate in the country; or concern itself with the problem of 2 out of every 3 meals, necessary to keep body and soul together, which the majority of the Indian masses lack altogether. The additional sources of revenue placed at the disposal of the Provinces by the new Constitution,—*e.g.* taxation of Agricultural Incomes, or Succession duties,—would be an unknown quantity for many of them, so far as accretion to their resources is concerned; and, would, perhaps, be substantially counterweighed by the reduction or abolition of other forms of revenue,—*e.g.* by introducing a minimum exempted from taxation in the Land Revenue demand, or abolition of the existing Excise Revenue,—which enlightened public conscience every where demands. The creation of Provincial jealousies, again, by uneven treatment is unmistakably symbolic of the Imperialist policy of "Divide and Rule." But so far as real nation-building in India goes, this award is absolutely ineffective, and possibly pernicious.

Provincial Expenditure

On the expenditure side of the Provincial Budget, as we have seen, there are considerable restrictions of a constitutional character, which would prevent the Provincial Legislatures ever enjoying a real *Power of the Purse* in a full measure. Apart from the numerous and considerable amounts **"charged upon the revenues of the Province"**,—and, as such, being non-votable,—there are the powers of the Governor in respect of his discretionary authority, as also in regard to those functions which are within his special responsibility. Expenditure, or financial grants in respect of both these, are liable to be forced upon the Provincial Legislature whether they will it or not. The combined effect of these must curtail the influence of the Provincial Legislature in regard to shaping the Financial Administration of the country, or embarking upon any considerable projects of development.

Add to this the further fact, that, in almost every department of nation-building activity, each Province has an immense leeway to make up; that in education, sanitation, agricultural or industrial development of the Province, the present standard of expenditure could be increased, in even the richest Provinces, twice or three times over, without being extravagant in the least, and without even then accomplishing the goal of a modern civilised State,—and you would realise how utterly restricted are the Provincial Legislatures under the new Constitution in the most material factor of modern administration.

The Conference of Provincial Finance Ministers, called in Bombay at the commencement of June 1937, has amply borne out this prophesy of woe. The assem-

bled Finance Ministers discovered: that all the most productive and elastic sources of revenue were retained by the Federal Government for their own purposes; that the sources left to the Provinces, old or new, were either unproductive, burdensome, or otherwise so thoroughly objectionable in themselves that they may have to be abandoned on their own account; that the demands upon the Provincial Purse for productive or developmental purposes were so insistent and imperative, that no substantial relief to the Provincial Purse was feasible through retrenchment or reduction in expenditure; that the salaries and cognate expenses of the superior services, which might admit of reasonable reduction, were guaranteed by the Constitution, so that no economy was possible in that direction either; and that, for the more ambitious projects of economic development or social reform needing considerable capital outlay, most of the Provinces being still under debt to the Government of India, were, under the Constitution, not absolutely free to finance such enterprise by borrowing.

The Bombay Ministry programme was estimated to cost about Rs. 125 lakhs, including only Rs. 41 lakhs for the introduction of compulsory primary instruction free to every child in the Province. But the sources from which this programme is to be financed remains yet to be indicated. As portents go, however, it seems unlikely that the Ways and Means would be found to finance this by no means too ambitious a Programme, simply because of the intricate and innumerable financial provisions of the Constitution, and, above all, because of the guiding spirit of the Constitution.

APPENDIX TO CHAPTER VII

REVENUE.

Heads of Revenue	1932-33 Central.	Provincial.
	Rs.	Rs.
Principal Heads of Revenue :—		
Customs	51,95,17	...
Taxes on Income	17,97,40	2,91
Salt	10,07,36	14,92
Opium	89,86	...
Land Revenue	17,86	30,67,94
Excise	41,51	14,47,59
Stamps	32,75	12,59,22
Forest	18,03	3,58,49
Registration	1,12	1,12,37
Payments from Indian States ...	73,57	...
Schedule Taxes	...	41,19
Total	**82,74,63**	**63,04,63**
RAILWAY.		
State Railways :—		
Commercial Lines Gross Receipts	84,34,87	...
Deduct-Working Expenses ...	60,95,59	...
Deduct-Surplus Profits paid to Companies	65,21	...
Net Receipts	**22,74,07**	...
STATE RAILWAYS :—		
Strategic Lines :—		
Gross Receipts	1,27,41	...
Deduct-Working Expenses ...	1,90,04	...
Net Receipts	**—62,63**	...
Total Net Receipts	22,11,44	...
ubsidised Company...	21,48	1,81

EXPENDITURE.

Heads of Expenditure	1932-33 Central.	Provincial.
	Rs.	Rs.
DIRECT DEMANDS ON THE REVENUE.		
Revenue :—		
Customs	92,94	...
Taxes on Income	77,59	...
Salt	1,11,52	...
Opium	83,88	...
Land Revenue	5,40	3,47,96
Excise	15,16	1,67,04
Stamps	14,06	23,91
Forest	22,98	2,68,15
Registration	15	66,19
Scheduled Taxes	...	40
Total	**4,23,68**	**8,73,65**
Forest and other Capital outlay Charged to Revenue :— ...	1,91	
Capital outlay on salt works ...	...	...
Capital outlay on Central Stamp Store	...	...
Capital outlay on Forests ...	46	13,15
Total	**2,37**	**13,15**
Railway Revenue Account State Railways : Commercial Lines:—		
Interest on debt...	30,10,39	56
Interest on Capital contributed by companies and Indian States...	1,33,58	...

APPENDIX TO CHAPTER VII—(*contd.*)

REVENUE

Heads of Revenue	1932-1933 Central	1932-1933 Provincial
	Rs.	Rs.
Railway Miscellaneous :—		
Receipts :—		
Commercial Lines	74,07	...
Strategic Lines	7,25	...
Transfers from Railway Reserve Fund	...	...
Withdrawals of sums deposited on account of the Railway Depreciation Reserve Fund	10,22,93	...
Total	**33,37,17**	**1,81**
Irrigation etc. :—		
Works for which Capital Accts. are kept—Gross Receipts—Direct Receipts	90	7,13,50
Portion of Land Revenue due to Irrigation	93	4,74,88
Total	**1,83**	**11,88,38**
Deduct Working Expenses ...	1,85	4,53,93
Net Receipts	**2**	**7,34,45**
Works for which no Capital Accounts are kept :—		
Direct Receipts	1,66	7,57
Portion of Land Revenue due to Irrigation	...	1,13,46
	1,66	1,21,33
Total	**1,64**	**8,55,48**

EXPENDITURE

Heads of Expenditure	1932-1933 Central	1932-1933 Provincial
	Rs.	Rs.
State Railways—Strategic Lines Interest on Debt.	1,46,55	...
Subsidised Companies.	5,55	...
Miscellaneous Rly. Expenditure Commercial Lines	40,84	...
Strategic Lines	26	...
Surplus Railway Revenue transferred to Reserve	...	...
Total	**33,37,17**	**56**
Irrigation etc. Revenue Account :—		
Works for which Capital Accounts are) kept—Interest on Debt—Financed from Ordinary Revenues	2,57	5,12,74
Financed from Famine Insurance Grants	...	...
Other Revenue Expenditure financed from Ordinary Revenues	2,[illegible]3	92,52
Other Revenue Expenditure financed from Famine Relief Fund	...	11,97
Total	**5,00**	**6,17,23**
Financed from Ordinary Revenues	40	2,94
Total	**40**	**2,94**

Post & Telegraphs:—		
Gross Receipts	10,55,40	...
Deduct-Working Expenses ...	10,16,21	...
	39,19	...
Debt Services:—		
Interest	1,87,63	2,27,73
Civil Administration		
Administration of Justice ...	1,46	1,01,43
Jails and Convict Settlements ...	2,68	38,95
Police	8,90	45,27
Ports and Pilotage	19,27	217
Lighthouses and Lightships ...	9,91	...
Education	2,07	91,62
Medical	2,53	57,20
Public Health	2,00	30,94
Agriculture	17,57	32,47
Industries	17	22,80
Miscellaneous Departments ...	17,91	1,00,99
Indian Stores Department ...	2,21	...
Total	**86,68**	**5,23,84**
Currency and Mint :—		
Currency	2,00,99	...
Mint	29,64	...
Total	**2,30,63**	...
Civil Works :—		
Civil Works	23,37	1,50,51
Hydro Electric Scheme :—		
Gross Receipts	...	4,83
Deduct Working Expenses ...	...	4,91
Net Receipts	...	— 8
Bombay Development Scheme	...	18,89
Total	**23,37**	**1,69,33**

Posts & Telegraphs Revenue Account.		
Interest on debt	81,08	...
Total	**81,08**	..
Posts and Telegraphs. :—		
Capital Outlay (charged to Revenue)		
Posts and Telegraphs Department.	4,56	...
Indo-European Telegraph Department	...	...
Total	**4,56**	...
Debt Services :—		
Interest on Ordinary Debt ...	43,56,34	2,16,50
Deduct-Amount Chargeable to		
Railways...	31,56,99	56
Irrigation...	2,57	6,11,30
Debt Services:—		
Posts and Telegraphs	82,56	...
Forests	70	13,18
Provincial Loans Fund	8,01,34	...
Vizagapatam Port...	15,40	...
Salt Department	4,21	...
Hydro-Electric Scheme	...	29,27
Other Government Commercial undertakings	4,60	6,44
Remainder Chargeable to Ordinary Debt	2,87,96	2,55,74
Interest on other obligations ...	8,78,43	6,24
Appropriation for Reduction or Avoidance of Debt	6,84,24	1,21,61
Total	**18,45,62**	**3,83,59**
Civil Administration :—		
General Administration	1,53,35	11,08,03
Audit	93,47	... ...
Administration of Justice ...	8,78	5,12,82
Jails and Convict Settlements ...	25,33	2,25,57
Police	55,35	12,33,70
Ports and Pilotage	22,23	16,53
Light-houses and Light Ships ...	9,81	...
Ecclesiastical	28,72	...
Political	1,45,09	...

APPENDIX TO CHAPTER VII—(*contd.*)

REVENUE.

Heads of Revenue	1932-33 Central	1932-33 Provincial
	Rs.	Rs.
Miscellaneous :—		
Transfers from Famine Insurance Fund	...	13,73
Receipts in aid of Superannuation	14,41	25,33
Stationery and Printing	21,11	28,23
Miscellaneous	57,70	1,23,16
Total	**93,22**	**1,90,45**
Military Receipts :—		
Army :—		
Effective	2,53,25	...
Non-Effective	70,45	...
Marine	3,27	...
Military Engineer Services ...	36,53	...
Total	**3,63,30**	...
Provincial Contributions etc. :—		
Contributions to the Central Government by Provincial Government	...	...
Miscellaneous adjustments between the Central and Provincial Governments	-96,05	96,05
Total	**-96,05**	**96,05**
Extraordinary Items :—		
Extraordinary Receipts	2,06	65,37
Transfers from Revenue Reserve Fund	...	...
Total	**2,06**	**65,37**

EXPENDITURE.

Heads of Expenditure	1932-33 Central	1932-33 Provincial
	Rs.	Rs.
Frontier Watch and Ward ...	2,17,95	...
Scientific Departments	66,53	4,71
Education	35,16	11,47,14
Medical	22,08	3,54,00
Public Health	13,21	1,45,54
Agriculture	30,25	2,12,45
Industries	1,95	65,42
Aviation	9,74	...
Miscellaneous Depts	20,21	70,95
Indian Stores Depts	9,57	...
Total	**9,68,73**	**50,96,86**
Civil Administration :—		
Capital outlay charged to Revenue—Capital outlay on Industrial Development from Revenue ...	...	2
Currency and Mint :—		
Currency	46,35	...
Mint	19,32	...
Total	**65,67**	...
Civil Works :—		
Interest on Capital outlay on Hydro-Electric Scheme...	...	29,27
Civil Works	1,77,16	7,36,47
Bombay Development Scheme ...	...	3,99
Total	**1,77,16**	**7,69,73**
Capital outlay on Civil Works etc.		

			charged to Revenue—Capital Expenditure on Civil Works met out of Extraordinary receipts.	...	11,83
			Miscellaneous :—		
			Famine :—		
			Famine Relief	...	8.03
			Transfers to Famine Relief Fund.	...	1.60
			Territorial and Political Pensions	30,82	...
			Superannuation Allowances and Pensions	2,73,74	5,57,17
			Stationery and Printing	35,26	1,00,48
			Miscellaneous	72,42	1,15,81
			Total	**4,12,24**	**7,83,09**
			Miscellaneous Capital outlay charged to Revenue—Commutation of pensions financed from ordinary Revenue	11,27	10,04
			Military Services : —		
			Army :—		
			Effective	37,22,33	...
			Non-Effective	8,50,44	...
			Marine	66,95	...
			Military Engineer Services ...	3,83,01	...
			Transfers to Military Reserve Fund	14,77	...
			Total	**50,37,50**	...
			Extraordinary Items :—		
			Extraordinary Payments ...	15,95	4,06
			Transfers to Revenue Reserve Fund	...	...
			Total	**15,95**	**4,06**
TOTAL REVENUE	**1,25,43,70**	**84,34,71**	**TOTAL EXPENDITURE CHARGED AGAINST REVENUE** ...	**1,23,88,51**	**85,66,75**

CHAPTER VIII.

JUDICIAL ADMINISTRATION IN THE PROVINCES.

The Judicial Administration in the Provinces is organized in a set of Courts—Civil and Criminal,—culminating in the High Courts. Revenue Courts, or Court of Wards, are apart from the main body of Judicial Administration, being in the nature rather of administrative arrangements than parts of the Judicial Machinery proper.

High Courts.

There are in India, under section 219* of the Act of 1935, six High Courts, one Chief Court, and three Judicial Commissioners' Courts, ranking as High Courts. These are the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Court in the Central Provinces and Berar, North West Frontier Province, and Sind. Assam is the only one of the Governors' Provinces without a High Court or a Chief Court of its own, but will presumably be served, for the purposes of a High Court, by the High Court of Calcutta. High Courts are an expensive luxury

*219.—(1) The following Courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, and the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North West Frontier Province and in Sind, any other Court in British India constituted or reconstituted under this Chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act. Provided that if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any Court or Courts mentioned in this sub-section, then as from the establishment of the new Court, this section shall have effect as if the new court were mentioned in lieu of the Court or Courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

which can be made to yield some revenue by making justice a saleable commodity, *e.g.*, by means of Judicial Stamp Fees. The cost of justice in India is proverbially high, and will continue to be so long as the Legal Profession is organised as a parasitical clique rather than a productive section of the community.

Section 219, sub-section (1) also provides that any other Court in British India, constituted or reconstituted under this Chapter as a High Court, and any other comparable Court in British India, which His Majesty in Council may declare to be a High Court for the purposes of this Act, may also be recognised as High Courts. New High Courts may, therefore, be created hereafter; or the existing Courts may be declared to be of the status of a High Court.

Overlapping Authority

In Item 53 of the Federal Legislative List in Schedule VII under section 100 of the Act, is included.

> "Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers";

while in the Provincial Legislative List in the same Schedule, item (1):

> "Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the

maintenance of public order; persons subjected to such detention."

permits the Provincial Legislature to legislate with regard to the administration of justice.

The Concurrent List contains the items of Criminal and Civil Procedure (as also items 2 to 4), and jurisdiction and powers of all Courts, (item 15 in list III) except the Federal Court with respect to any of the matters in that List, on which the Provincial Legislature as well as the Federal Legislature are entitled to Legislate. The legislative authority is thus left to the Provinces as well as the Federal Legislature with regard to the strictly defined terms as quoted above.

It may be added that the highest Court in a Federated State may also be recognised as a High Court for the purposes of the new Constitution.

Every High Court in British India, at any rate, would be regarded as a Court of record, and must consist of a Chief Justice and such other Judges as His Majesty may appoint from time to time.* It will be noticed that the High Court Judges are appointed by the King, and not by any authority in India.† This, of course, may reduce the authority of the Local Governments over the Judges of the High Courts in their Provinces. But the theory underlying such a provision seems to be: that the highest judicial officers must be made as independent of the Local Governments and their political entanglements as possible; and hence the withdrawal of their appointment from Indian authorities and its vesting in the Crown.

*Sec. 220 (1).
†Sec. 220 (2).

The maximum number of Judges in a High Court may be fixed by an Order in Council including the Additional Judges appointed by the Governor-General.* The Judges of High Courts are to be appointed by a Royal Sign Manual, and are allowed to remain in office upto sixty years of age.† Presumably, these Judges are appointed during the pleasure of the King, but are not removable from their office except (a) by resignation in writing by the Judge himself, and addressed to the Governor of the Province;‡ (b) by the King-Emperor by warrant under the Royal Sign Manual on the ground of misbehaviour, or (c) infirmity of mind or body, if the Judicial Committee of the Privy Council reports that the Judge ought to be removed for such reasons on a reference being made to them by His Majesty.§

In this connection, it must be noted that the Judges are appointed for a definite period, subject to an age-limit, and not for life as in the United Kingdom or the United States. They are, likewise, removable, in India, not for misbehaviour upon an address of the Legislature, as is the case in England, but by the King-Emperor on a definite report by the Judicial Committee of the Privy Council, certifying that the Judge in question has been guilty of misbehaviour, or suffers from some infirmity of mind or body. This is another instance in which the new Constitution deliberately displays distrust of the Indian politician, and restricts the power of the Indian authorities, however unlikely the exercise of

*Section 220 (1).

†Sec. 220 (2).

‡Sec. 220 (2) Priviso (a).

§Sec. 220 (2) Proviso (b).

such a power may be in an untoward or improper direction. Nowhere perhaps is it so necessary, as in India to-day, owing to the sharply growing conflict between the alien element entrenched in vested positions and the legitimate ambitions of the children of the soil, that the Judiciary be free from any taint of partisanship. By introducing such provisions indicating obvious distrust of the leaders and spokesmen of the Indian people; and by maintaining a certain statutory minimum of the British element in the highest judicial posts in the land, the Constitution puts a premium on judicial partisanship, or class outlook among the Judges, which cannot but be deplored. If the authors of the Constitution desired a complete freedom of the Judiciary from political influence, there are other ways of guaranteeing such independence, which the Constitution might well have adopted without rendering the Indian Ministerial authority so wholly futile as such provisions tend to make it.

Says the Report of the Joint Select Committee of Parliament, who scrutinised this Constitution in Bill form:—

> 323. "We observe that the Judges are to hold office *during good behaviour*, and not, as is at present the case with Judges of the Indian High Courts, *at pleasure*. We think that this is right, but we assume that it is not intended that the Legislature should have power to present an Address praying for the removal of a Federal Judge; and *in our opinion a Judge should not be removed for misbehaviour*, except on a report by the Judicial Committee of the Privy Council, to whom His Majesty should be empowered to refer the matter for consideration."

In other words, the combined wisdom of the Indian Legislature,—who pay for these services,—is not deemed equal to the task of making a proper recommendation by way of an Address to the Crown in respect of a Judge found guilty of misbehaviour; while a Committee of total strangers, sitting 7,000 miles away from the place of offence, is deemed to be the right and proper body to make a report on such an important affair; and to require the King to act on such a Report. The Act does not say if, before making such a Report, the Judicial Committee of the Privy Council would make any investigation into the allegations against the Judge in question; and, if so, whether the Judge complained against would have the right or the opportunity to defend himself. It is also not clear who is to make a complaint in this regard to the King in the first instance. Finally, it is by no means clear if those who introduced such a provision have considered the reaction on public opinion of all the unfortunate or unsavoury details that may be published in the course of such proceedings. But, apparently, no sacrifice of even common decency or public propriety is too great, in the minds of those who framed this Constitution, if at the expense thereof the rooted distrust of the Indian politician in the British politician's mind could be made manifest.

Qualifications for Judges

The qualifications for the appointment of Judges are laid down somewhat negatively in sub-section 3 of section 220.

220. (3) "A person shall not be qualified for appointment as a Judge of a High Court unless he—

(a) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the

Faculty of Advocates in Scotland of at least ten years' standing; or

(b) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or

(c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small causes court; or

(d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession:

Provided that a person shall not, unless he is, or when first appointed to judicial office was a barrister, a member of the Faculty of Advocates, or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included."

Civilians as High Court Judges

It is worth remarking that the highest Judiciary in India is to contain, not only experienced Jurists or Advocates of British or Indian training, but also members of the Indian Civil Service of a certain standing, or person with a certain minimum experience in the Judicial line. The presence of the Indian Civil Service members on the High Court Benches has always been regarded, in Indian political circles, with suspicion, since these members of the Judiciary are likely to bring the outlook and viewpoint of the execu-

tive while functioning as Judges of the High Court. The British constitutional practice of keeping the Executive and the Judicial side strictly apart is also violated in this provision. The framers of the Act of 1935, however, have not deemed it necessary to remove this constitutional incongruity; and, in fact, the authors of the report of the Joint Select Committee of Parliament, which scrutinised the new Constitution in its Bill form, have actually recommended that the present proportion of *at least one third* or the Judges of the High Court being drawn from the Indian Civil Service, to be continued.

The proportion of the purely Lawyer Judges is not to be reduced; but the office of the Chief Justice is still barred to pleaders qualified in India only, unless such pleaders have had experience of judicial office of at least three years in a High Court. This is a most undeserved slur on the purely Indian legal profession, its training, or its competence, which Indians of every school of political thought have always denounced.

Judges' Privileges and Responsibilities

Judges of the High Court are required to take an Oath or make an Affirmation as laid out in Schedule IV of this Act.* The salaries and allowances of the Judges of the High Court, including expenses in respect of equipment and travelling upon their first appointment, as also their allowances during leave or on account of pensions, are to be fixed by Orders in

*S. 220 (4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Querry: Are not High Court Judges allowed to make an affirmation in lieu of an oath? Or must they be all sound deists, or theists, even if not quite good churchmen, Hindus, or Muhammadans? In the section proper there is no mention of an affirmation. Compare the language of Sections 24 and 64 in this behalf.

Council from time to time. But neither the salary of a Judge already in office, nor his rights in respect of leave or pension, can be varied to his disadvantage during the period of his service (Section 221).* One of the Judges may be appointed to act for the Chief Justice of a High Court if the office is vacant, or if the Chief Justice is absent, or for any other reason unable to perform the duties of his office.† Such an appointment may be made by the Governor-General in his discretion; but the permanent appointment remains with His Majesty, as required under section 220.

For a similar vacancy in the office of any other Judge, the Governor-General may, *in his discretion*, appoint a duly qualified person to act as such Judge until another duly qualified person is appointed by His Majesty to the vacant office, and such other person enters upon his duties, or if the permanent Judge returns to his post.‡ If there is any temporary increase in the business of the High Court, or if there be any arrears of work in any such Court, the Governor-General *in his discretion* may appoint Additional Judges from amongst persons duly qualified for the post for such period not exceeding two years as may be specified.§

*221. The Judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council.

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

†Compare Section 222 (1).

‡Compare Section 222 (2).

§222—(3). It will be noticed that in all these contingencies, the officer empowered to act is the Governor-General, **in his discretion, i.e.,** without any reference to his Ministers. The Provincial Governor, or the Provincial Governments have, of course, no say whatever in such matters. When the Constitution was in its Bill form, the officer empowered in all these cases was the Governor of the Province concerned. It is impossible to fathom the reason which dictated this change.

Jurisdiction

The High Court's jurisdiction is limited by the Orders in Councils or by existing legislation, as also the law to be administered to the High Courts, or the powers of the Judges. These powers include the power to make rules of Court, and to regulate the sittings of the Courts, as also the division of work among the several Judges.*

Every High Court is entitled, under section 224, to have superintending jurisdiction over all Courts in India which are subject for the time being to its appellate jurisdiction; and may

(a) "call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts."

"Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor."

The High Court is given special jurisdiction, by section 225, to transfer certain cases from Subordinate

*223. Subject to the provisions of this part of this Act, to the provisions of any Order in Council, made under this or any other Act, and to the provisions of any Act of the appropriate Legislature enacted by virtue of the powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court, and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act:

Courts to itself, if those cases involve any Federal or Provincial Act. But such transfers can only be made, in regard to cases involving Federal Acts, on the application of the Federal Advocate General, or, if they involve Provincial Acts, on the application of either the Federal Advocate General, or the Provincial Advocate General.

Revenue Courts

The High Court, however, is for the present, debarred from any for the present jurisdiction in any matter concerning the revenues or acts ordered or committed in connection with the collection of such revenues, according to the usage and practice of the country.* But by special legislation, this practice may be amended, and the High Court may be given jurisdiction, provided that no such legislation, can be introduced in the Federal or Provincial Legislature without the previous sanction of the Governor-General or of the Governor as the case may be, *given each in his discretion.*

Section 228 provides:

(1) The administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the Court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

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*226.—(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion, or as the case may be, of the Governor in his discretion.

(2) **The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.**

Under this section, practically all High Court expenditure, including that of the High Court of Calcutta, is not to be voted upon by the Provincial Legislature. The High Courts would thus be financially independent of the Provincial Parliaments. This is generally based on the analogy of the British practice, which includes in the Consolidated Fund Charges judicial salaries and other charges in connection with the Courts of Justice. We need, therefore, offer no further comment upon it.

The language of the High Court is to be English.* The King is entitled to constitute or re-constitute High Courts by letters patent. The power of reconstitution may even include power to amalgamate two Courts into one in one of the Provinces.† Certain extra-provincial jurisdiction is also given to the High Court under section 230; but the local Legislature of the province, to which the High Court particularly belongs, is not empowered to increase, restrict or abolish the extra-provincial jurisdiction of the High Court.

Subordinate Civil and Criminal Courts

The Subordinate Judiciary is to be placed under the general control and supervision of the High Courts;‡ but appointments to the subordinate judiciary will be made by authorities in India, who will also exercise a measure of control over the judges after their appointment, so far at any rate as promotion and posting are

*Cp. Section 227.
†Section 229.
‡Cp. Sections 254-255-256.

concerned.* Apprehensions were entertained in some quarters that if the purity of judicial administration were to be maintained free from any party bias or political pressure, it would be as well to remove the power to appoint, to promote, or to transfer judicial officers from the Ministers to some authority above petty party prejudices or predilections. As it is really the Subordinate Judicial Officers, who not only really do the bulk of the judicial work in the country, but come into contact more than the High Court, with the people at large, the desirability of maintaining these officers in an independent position cannot of course be over-emphasised.

The Authors of the Select Committee Report, however, were content to lay down the safeguard only of a convention or rule, which would preclude political recommendation from being the basis of any Judicial appointment.

> 338. "A strict rule ought in our opinion to be adopted and enforced though it would be clearly out of place in the Constitution Act itself, that recommendations from or attempts to exercise influence by members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be. We would admit no exception to this rule, which has for many years past been accepted without question in the Civil Service of the United Kingdom. We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards; but this is a matter in which the right principle ought to be laid down at the very outset of the new constitutional order; and the observations which we have thought it our duty to make

*Cp. ante Chapter 5.

may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own."

So far as the Subordinate Judges or Munsiffs are concerned, the Provincial Government may make appointments after consultation with the Public Service Commission, and in accordance with the rules made after consulting the High Court as regards the standards of qualifications expected of candidates seeking such judicial appointments. Though the appointment may actually be made by the Governor, the candidates for appointment will be selected by the Public Service Commission, in consultation with the High Court. In making these appointments, accepted lines of policy in regard to guaranteed proportions of certain minorities to such appointments will naturally have to be observed. But though the Public Service Commission would act only in an advisory capacity, no Minister in all probability would dare to go against their advice in the absence of very strong reasons sufficient to convince the Governor to the contrary.

The Joint Select Committee also lay down:

"We think it of first importance that promotions from grade to grade or from the rank of Munsiff to that of Subordinate Judge, and also the leave and postings of Munsiffs and Subordinate Judges, should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected." (Para 339.)

District Judges

As regards the District Judges, if the candidates for such posts are to be drawn from the Indian Civil Service, the appointment would be made by the

Governor on the recommendation of the Minister concerned, and after consultation with the High Court. For less important appointments the recommendation of the Minister must be backed with the approval of the Public Service Commission and of the High Court. Appointments, thirdly, from members of the Bar to any judicial office must be made from amongst persons nominated by the High Court, subject to any general regulations of policy as regards communal proportions in such appointments.

Promotions of District Judges should be by recommendation of the Minister concerned after consultation with the High Court, while the Governor is given the discretionary power to reject any particular recommendation if he does not think it proper. In all these purposes, however, sections governing the Civil Services are more apposite.

Criminal Courts and Judiciary

As regards the judiciary in the Criminal Courts, the ladder begins with the Honorary Magistrates or Justices of the Peace who dispose of petty cases. For more important cases, there are the District Magistrates, the Deputy Magistrates and Sub-Deputy Magistrates and Tashildars, not to mention the Presidency Magistrates in the Presidency Cities of Bombay, Madras and Calcutta. These have varying jurisdiction to try and dispose of particular categories of cases, as laid down in the appropriate Code. The Sessions Judge, or the High Court exercising its Criminal Jurisdiction in Sessions, forms the apex of the system, appeal being permissible from all lower Courts to the High Court in all serious cases, as also from the

Sessions division of the High Court itself in cases involving questions of law. Every death sentence passed by any Court lower than the High Court needs to be confirmed by the High Court.*

Candidates for the first appointment to these posts will be selected by the Public Service Commission, and the appointments would be made by the Governor on the recommendation of the Minister from amongst candidates so selected. As for subsequent promotions or postings, the District Magistrate may make recommendation to the Minister; and these recommendations will not be disregarded.

Critique of the Indian Judicial System

We may now summarise the criticism,—voiced incidentally in the preceding pages in several instances,—as regards the entire system of Judicial Administration in India. In this, we shall leave out the question of the Federal Court, which will be discussed in the companion volume to this; and confine our remarks strictly to the Judicial Administration in the Provinces.

Apart from the power of appointment, censure, punishment, or dismissal of the highest judicial officers, which is vested in non-Indian hands or extra-Indian authorities; apart, again, from the question of financial powers over the Judiciary, which are withdrawn from the competence of the local Legislature or the Ministry, there are grave questions of fundamental constitutional importance in regard to the Judicial Administration in this country, which require specific comment to show how entirely obsolete and

*Coroners Courts are in a category by themselves, and are not mentioned in the Constitution Act.

reactionary are the principles influencing the authors of the Constitution Act of 1935.

(1) In the first place, the entire section of the Act dealing with the Judiciary seems to be motived by that doctrine of *Separation of Powers,* which is carried to its logical conclusion in the United States of America. But even there, while there is not a perfect separation of these powers between the Executive, the Legislative and the Judicial authority, the difficulties resulting from such a separation as actually obtains are productive of embarrassment and complications, which have of late been forcibly illustrated by the judgments of the Supreme Court in respect of the so-called New Deal cases. Legal Tribunals tend, by their very nature, to be conservative, and so lag behind times. And though the Executive authority in every modern state is not as progressive and uptodate as might well be desired, it has of necessity to take stock more of the changing conditions of the community than the detached position of the Judiciary permit them to do. A Judge, by the very nature of his calling, must be detached and impartial, or unconcerned in current affairs; and may be unacquainted with the trend of development in social thought. Then only can he deal out absolute justice according to law between citizen and citizen. The Executive, on the other hand, have, by the law of their being, to be in daily and intimate contact with the people they govern, especially in countries with parliamentary institutions. Hence, an Executive, backed by a popular Legislative authority, is more likely to be alive to the changing needs of the community than the Judiciary in its exclusive atmosphere of detachment and unconcern. But, even so, in

the United States, there have been tussels between the Executive, led by a President as strong as Jefferson or Adams, and a Chief Justice as determined as Marshall. In the United States, again, there was no complication like we have in India, owing to the specially privileged and entrenched position a foreign element enjoys in the country, and even in its judicial services. There is, therefore, inherent, in the constitutional provisions outlined above, the seed of future discontent and constitutional impasse, which the framers of the Act of 1935 do not seem to have appreciated as much as could have been desired.

The foregoing argument, however, need not be interpreted to mean that Indians would desire a Judiciary dependent upon the local Ministry, or that they would combine judicial with executive functions. No one could be more sensible of the harm resulting from making the Judiciary of a country, situated as India is to-day, subservient to the political powers that be. In fact, the true essence of these very constitutional provisions suggests a dependence on an outside political authority, which cannot but provoke criticism from the Indian side. Nevertheless, it is one thing to make the Judiciary independent of the changing political currents; and a totally different thing to place it under an authority entirely outside the country, and unamenable to its public opinion, unfamiliar with its changing conditions, and even liable to be prejudiced against its growing requirements. Our criticism is not against making the Judiciary as safe and secure, as independent and impartial, as may be possible. The criticism is rather against the obvious distrust of the Indian people as a whole implied in the provisions mentioned

above; as also regarding the possibility of a needless conflict and impasse resulting from such a specially privileged position accorded to the Judiciary, in a country where the popular ambitions are undeniably in conflict with the interests of the governing class, and where the highest judicial officers are made, by the law of their being, more partial to the governing class and its interests than to the masses governed. Means could have been found, much less objectionable than those devised in the Constitution, if the sole objective of the authors of the Constitution Act of 1935 had been to secure the independence and impartiality of the Judges. Inasmuch as those means are not applied, and reliance is had on such special measures, the Act cannot, in this department, escape adverse criticism.

(2) The combination of the Judicial and Executive functions in the Collector-Magistrates, or in the Revenue Courts, offends against this doctrine much more flagrantly than the suggestion that some form of ultimate control over the highest judiciary should be left in some authority in the country itself. Argument of cost is, even on the official side, the only consideration standing in the way of this much needed reform. All other considerations of judicial independence and respect for popular liberties demand an early separation of these functions. It is difficult to say whether, under the new Constitution, this standing blot on the Judicial Administration of India would be altogether removed.

(3) The existence of separate Revenue Courts is open to the same criticism and objection. No measure of social reform affecting the Land Revenue and Land Tenure would be properly administered, so long as

these Courts are in a category by themselves, under exceutive officers, and following their own law and procedure.

The question raised by such separate Revenue Courts has a constitutional importance, inasmuch as, in India, citizens have, by the Constitution Act, no fundamental rights of citizenship assured to them. The possibility of administrative oppression through such engines, especially in a country teeming with ignorant masses, cannot be exaggerated. India may not have Administrative Courts proper, as they have in some Continental countries. But these half-sisters of such semi-judicial engines of oppression cannot be overlooked by any one desiring a free and democratic system of government for the Indian people in every respect possible. The rule of law, characteristic of the British constitutional tradition, is all but impossible to maintain so long as executive and judicial functions are combined in the same hands; so long as there are special Courts for those matters which bring the citizen directly into contact with the Government, and so long as there are no assured Fundamental Rights of citizenship.

(4) India has, again, no Supreme Court of its own. The highest appellate Tribunal still remains outside India. There is to be, under the new dispensation, a Federal Court, to which we shall refer in another monograph of this Series. But the Federal Court is not the same thing as a Supreme Court for all kinds of final appeals and decisions, in constitutional as well as in personal matters affecting individual citizens. The highest Court of Appeal for all Indian cases is still the Judicial Committee of the Privy Council. So long as

this ultimate appellate tribunal remains outside India, the administrative machinery of India can neither be complete, nor entirely independent.

(5) We have already commented upon the presence of the Civilian Judges on High Court Benches as an undesirable feature of the Judicial Administration in India, and as being not in keeping with the best traditions of the British Constitutionalism; and so need not repeat that criticism here. The same may be said of the exclusion of the Indian trained lawyer from the post of Chief Justice of a High Court.

(6) The peculiar position assigned by law to the European British Subject in India, in regard to Criminal trials in which such persons are concerned, is an instance of indefensible special privilege before the highest Courts of justice in the land, which militates sadly against the principle of universal equality of all citizens before such tribunals. If there is a single feature of the administrative system in India which marks it out more than any other as the domination of an Imperialist race over a subject people, it is this peculiarly privileged position assigned to European British subjects **vis-a-vis** the Indian High Courts. The prohibition to Indians to carry arms is the only other feature of that system which can at all be ranked in the same class.

(7) There are other features of the Judicial Administration in India, which are, also, objectionable, from a constitutional stand-point. The Jury system has, for instance, a very limited application in India, mainly in capital cities, and then, too, in important criminal trials. In so far as that system is recognised as one of the bulwarks of popular liberty, India must be

said to be lacking in a most essential cog in the wheel of constitutional machinery.

(8) The relief obtainable in Britain by means of the writ of *Habeas Corpus* is either restricted unduly in India, or non-available so far as the large bulk of the masses are concerned.

(9) The cost of justice is also a considerable feature in this country. It is not merely the dues proper of the Courts that constitute a burden. The heavy charges of the legal Profession make a far more serious burden than any Court Fees or Stamp Duties levied in connection with the administration of justice. So long, however, as the Legal Profession remains the parasitical organisation that it is to-day; so long as the social system is based on principles which place a premium on such parasitism, there can be no hope of reform in this direction.

(10) A good deal of the law of India has been codified; but the Codes, excellent as they are, bear evidence of the unhappy state of the country. By far the larger portion of the personal law applicable to the vast mass of the people of the country is yet uncodified, and motived by principles and ideals no longer operative even by the communities concerned. Personal law, however, is held to be so closely concerned with the people's religious beliefs, that any attempt towards its modernisation, rationalisation, codification is bound to prove a most difficult task, likely to be most strenuously obstructed by the very people who are sought to be benefited by such an attempt.



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